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Presidential Documents

Title 3—

The President

Proclamation 10758 of May 16, 2024

70th Anniversary of *Brown* v. *Board of Education*

By the President of the United States of America

A Proclamation

Seventy years ago, the Supreme Court delivered a unanimous decision in *Brown* v. *Board of Education* that outlawed racial segregation in our Nation's public schools, finding that ''separate but equal'' is ''inherently unequal.'' That landmark decision helped us move closer to realizing the idea that defines who we are as a Nation: We are all created equal and deserve to be treated equally throughout our lives. While our society has never fully lived up to that idea, we have never fully walked away from it either—and on this milestone anniversary, we promise we will not walk away from it now.

As we commemorate 70 years since *Brown* v. *Board of Education* changed our Nation, we also commemorate the important foundation that was laid in Delaware. A mother in Hockessin, joined by the parents of eight other students in Claymont, simply wanted their children to attend school and be treated with dignity and respect. Through *Bulah* v. *Gebhart* and *Belton* v. *Gebhart*, courageous lawyers and judges in Delaware—like Louis Redding and Chancellor Collins Seitz—helped lay the legal groundwork for the *Brown* v. *Board of Education* decision to strike down the insidious doctrine of separate but equal.

Brown v. *Board of Education* may have opened up schools to all our Nation's students, but the fight to get these students into classrooms persisted. There were still people in power who wanted to pull America back to the past, doing everything they could to keep school doors shut to Black students. Our Nation will never forget the stories of the Little Rock Nine, the group of students who were refused entry to their local high school by the National Guard blocking the doors. We will never forget the story of Ruby Bridges, who at only six-years-old had to be escorted by United States Marshals to her elementary school because an angry mob tried to prevent her from entering. Across the country, Black students who entered newly desegregated schools endured discrimination, harassment, and racism from their peers, educators, and school administrators. Yet, these students in the face of danger returned to class again and again, backed by community and civil rights leaders who were determined to take a stand for racial justice and equity that would benefit future generations of Americans. They showed us that bravery exists in the youngest of hearts, possessing the guts and courage to stand up for the best of our country. All the while, they kept faith in our Nation and in our North Star—the sacred ideals at the heart of who we are.

Today, we know that the lessons learned from *Brown* v. *Board of Education* served as a catalyst for the most fundamental civil rights legislation of our time like the 1964 Civil Rights Act and 1965 Voting Rights Act. But while the decision in *Brown* v. *Board of Education* has allowed so many schools to develop diverse, inclusive learning communities that value empathy, kindness, and tolerance, the full potential of *Brown* v. *Board of Education* remains unfulfilled. There is still so much work to do to ensure that every student has equal access to a quality education and that our school systems

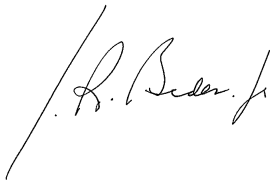
fully benefit from the diversity and talent of our students—because diversity has always been one of our Nation's greatest strengths.

Since I came into office, we have prioritized making our schools more equitable. My Administration secured nearly $2 billion in additional Title I funding under the Elementary and Secondary Education Act to help provide a high-quality education to our most underserved students. Additionally, my American Rescue Plan delivered historic funding to our Nation's schools, supporting critical programs that help level the playing field like after-school and summer programs. Further, after the Supreme Court effectively ended affirmative action in college admissions, I directed the Department of Education to analyze what practices help build more inclusive and diverse student bodies. At the same time, we are making sure to tell the full truth of our Nation's history, and I am proud to have signed a bill to expand the historic sites of *Brown* v. *Board of Education* National Historical Park, preserving this essential history.

On this milestone anniversary, may we honor the *Brown* v. *Board of Education* decision and all the people who have fought so hard to open classroom doors to every student. It is a reminder that the promise of America is big enough for everyone to succeed and that every generation of Americans has benefited by opening the doors of opportunity just a little bit wider to include those who have been left behind. Today, may we recognize the inherent value in having diverse, thriving schools and continue working together to build a future worthy of the dreams and aspirations of our Nation's students.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 17, 2024, as the 70th anniversary of *Brown* v. *Board of Education.* I call upon Americans to honor all the civil rights leaders, activists, educators, and students who have fought for decades to make our schools more equitable and work together to realize the promise of America for every American.

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



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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1295; Project Identifier MCAI–2023–01124–R; Amendment 39–22744; AD 2024–09–02]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AW169 helicopters. This AD was prompted by manufacturing defects in certain forward and aft float assemblies. This AD requires replacing certain aft float assemblies or, as an alternative, deactivating the emergency flotation system (EFS). This AD also prohibits installing certain forward and aft float assemblies. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective June 5, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 5, 2024.

The FAA must receive comments on this AD by July 5, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1295; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–1295.

Other Related Service Information: For Leonardo Helicopters service information identified in this final rule, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; phone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* For Dart Aerospace service information identified in this final rule, contact Dart Aerospace, LTD., 1270 Aberdeen St., Hawkesbury, ON, K6A 1K7, Canada; phone: 1–613–632–5200; Fax: 1–613–632–5246; or at *dartaero.com.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7836; email *kyri.zaroyiannis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–1295; Project Identifier MCAI–2023–01124–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kyri Zaroyiannis, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7836; email *kyri.zaroyiannis@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD

2023–0188–E, dated October 30, 2023 (EASA AD 2023–0188–E), to correct an unsafe condition for Leonardo S.p.A. Model AW169 helicopters.

This AD was prompted by manufacturing defects in certain DART Aerospace forward float and aft float with life raft assemblies. According to Dart Aerospace, non-conforming girt bars were used in some forward and aft float assemblies, and the belt loops in some aft float assemblies were incorrectly positioned.

The FAA is issuing this AD to address non-conforming float assemblies. The unsafe condition, if not addressed, could result in failure of a float assembly during an emergency landing on water and subsequently prevent a timely egress from the helicopter, which could result in injury to helicopter occupants. See EASA AD 2023–0188–E for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0188–E requires removing each affected float assembly and sending it to Leonardo and replacing it with a serviceable float assembly. As an alternative, EASA AD 2023–0188–E allows deactivating the EFS by locking the float auto breaker in EDCU [enhanced display control unit] 1 or 2; pulling, locking, and tagging the breaker from the overhead circuit breaker panel; and installing a decal in clear view of the pilot. EASA AD 2023–0188–E also prohibits installing an affected float assembly on a helicopter.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No. 169–257, dated October 30, 2023 (ASB 169–257). This service information specifies procedures for replacing affected forward float and aft float with life raft assemblies and deactivating the EFS.

The FAA also reviewed Dart Aerospace Service Bulletin Document Number SB23–2, dated October 20, 2023, which is included as Annex A of ASB 169–257. This service information specifies procedures for Dart rework and reidentification.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2023–0188–E, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023–0188–E is incorporated by reference in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2023–0188–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0188–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0188–E. Service information referenced in EASA AD 2023–0188–E for compliance will be available at *regulations.gov* under Docket No. FAA–2024–1295 after this final rule is published.

Differences Between This AD and the EASA AD

EASA AD 2023–0188–E requires replacing certain forward and certain aft float with life raft assemblies within 24 months or during the next accomplishment of maintenance task 95–24 or 95–25, whereas this AD does not. The FAA plans to publish a notice of proposed rulemaking to give the public an opportunity to comment on those long-term requirements.

Interim Action

The FAA considers that this AD is an interim action. A longer compliance time to replace certain forward and certain aft float with life raft assemblies is allowable. Accordingly, the FAA plans to publish a separate notice of proposed rulemaking to address the unsafe condition on these float assemblies.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because manufacturing defects may lead to failure of affected float assemblies. Failure of a float assembly could cause the helicopter to roll to one side but remain buoyant or cause the helicopter to capsize underwater. Because of the high utilization rate of helicopters with these float assemblies installed, and because these helicopters conduct operations over water, the FAA determined that certain float assemblies must be replaced within 25 hours time-in-service, depending on the defect type. This compliance time is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to

5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects up to 15 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing an affected float assembly takes approximately 2 work-hours and parts cost approximately $113,491 for an aft float with life raft assembly, for an estimated cost of up to $227,322 per helicopter (up to two aft float with life raft assemblies) and $3,409,830 for the U.S. fleet.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–09–02 Leonardo S.p.a.: Amendment 39–22744; Docket No. FAA–2024–1295; Project Identifier MCAI–2023–01124–R.

(a) Effective Date

This airworthiness directive (AD) is effective June 5, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AW169 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Codes: 2560, Emergency Equipment; and 2564, Life Raft.

(e) Unsafe Condition

This AD was prompted by manufacturing defects in certain forward and aft float assemblies. The FAA is issuing this AD to address non-conforming float assemblies. The unsafe condition, if not addressed, could result in failure of a float assembly during an emergency landing on water and subsequently prevent a timely egress from the helicopter, which could result in injury to helicopter occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2023–0188–E, dated October 30, 2023 (EASA AD 2023–0188–E).

(h) Exceptions to EASA AD 2023–0188–E

(1) Where EASA AD 2023–0188–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0188–E refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require helicopters with a Group 2 affected part installed to comply with paragraph (1) of EASA AD 2023–0188–E.

(4) Where the service information referenced in paragraph (1) of EASA AD 2023–0188–E specifies sending a removed float to Leonardo, this AD does not require that action.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0188–E.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0188–E specifies to submit certain information to the manufacturer, this AD does not require that action.

(j) Special Flight Permit

A one-time special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to fly the aircraft to a location where the actions required by this AD can be accomplished. This flight must be a non-revenue flight and limited to only essential flight crew.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Kyri Zaroyiannis, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7836; email *kyri.zaroyiannis@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2023–0188–E, dated October 30, 2023.

(ii) [Reserved]

(3) For EASA Emergency AD 2023–0188–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on May 10, 2024.

James D. Foltz,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–11138 Filed 5–16–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[33 CFR Part 147

[Docket Number USCG–2023–0277]

RIN 1625–AA00

Safety Zone; Vineyard Wind 1 Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0501, Offshore Massachusetts, Atlantic Ocean; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; correction and withdrawal.

SUMMARY: On May 2, 2024, the Coast Guard published a temporary interim rule and request for comments extending the effective period for the 63 temporary 500-meter safety zones around the construction of each facility during the development of the Vineyard Wind 1 Wind Farm project area. That rule contained an incorrect phone number for the First Coast Guard District Command Center. This document corrects the phone number in the regulatory text of the rule. This document also withdraws a correction that we issued on May 14, 2024, that proceeded to fix the wrong phone number in the temporary interim rule.

DATES: This correction is effective June 1, 2024. As of May 21, 2024, the temporary interim rule correction published on May 14, 2024, at 89 FR 41895, is withdrawn. Comments on the temporary interim rule (89 FR 35709, May 2, 2014) are still due on or before July 31, 2024.

SUPPLEMENTARY INFORMATION: On May 2, 2024, the Coast Guard published a temporary interim rule and request for comments titled ''Safety Zone; Vineyard Wind 1 Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0501, Offshore Massachusetts, Atlantic Ocean'' (89 FR 35709). In addition, on May 14, 2024, we published a temporary interim rule; correction that stated it was correcting a phone number in the original temporary interim rule. However, the correction it made was inaccurate and we are withdrawing that correction document.

In the temporary interim rule regulatory text we discussed a how a persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander via VHF–FM channel 16 or by phone calling First Coast Guard District Command Center. The phone number listed in the regulatory text was discovered to be erroneous and requires correction.

Persons or vessels seeking permission to enter the safety zone must request authorization from the First Coast Guard District Commander via VHF–FM channel 16 or by phone at 866–842–1560 (First Coast Guard District Command Center).

Therefore, we are making the following correction to the phone number provided in the temporary interim rule regulatory text in § 147.T01–0277(d) to ensure that interested persons can get in touch with the First Coast Guard District Command Center.

Correction

In FR Doc. 2024–09538 appearing on page 35709 in the **Federal Register** of Thursday, May 2, 2024, the following correction is made:

§ 147.T01–0277 [Corrected]

■ 1. On page 89 FR 35712, in the second column, in paragraph (d) of § 147.T01–0277, the phone number, ''617–223–1560'', is corrected to read ''866–842–1560''.

M.T. Cunningham,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2024–11113 Filed 5–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0371]

Safety Zone; Atlantic Ocean, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the College of the Florida Keys Swim Around Key West, Key West, Florida to provide for the safety of life on the navigable waterways during this event. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port Key West or a designated representative.

DATES: The regulation in 33 CFR 165.786 will be enforced for the location identified in item 6.1 of the table to § 165.786, from 9 a.m. until 5 p.m. on June 8, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Hayden Hunt, Sector Key West Waterways Management Department, Coast Guard; telephone (305) 292–8823; email *Hayden.B.Hunt@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.786, table to § 165.786, item 6.1, for the College of the Florida Keys Swim Around Key West from 9 a.m. until 5 p.m. on June 8, 2024. This action is being taken to provide for the safety of life on navigable waterways during this event. The regulation for recurring marine events within Sector Key West Captain of the Port (COTP) zone, 165.786, table to § 165.786, item 6.1, specifies the location of the regulated area. During the enforcement period, as reflected in § 165.786(a) no person or vessel may enter, transit through, anchor in, or remain within the established regulated areas without approval from the Captain of the Port Key West or designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

The Coast Guard will provide notice of the regulated area by Local Notice to Mariners and Broadcast Notice to Mariners. If the Captain of the Port Key

West determines that the regulated area need not be enforced for the full duration stated in this publication, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 15, 2024.

Jason. D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2024–11057 Filed 5–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0394]

Safety Zones; Annual Events in the Captain of the Port Eastern Great Lakes Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce multiple safety zones located in federal regulations for recurring marine events taking place in July 2024. This action is necessary and intended for the safety of life and property on navigable waters during these events. During the enforcement periods, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Eastern Great Lakes or a designated representative.

DATES: The regulations listed in 33 CFR 165.939 Table 165.939, will be enforced for the following locations described in events (b)(4) through (11) and (b)(30) during July 2024, according to the schedule listed in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Cody Mayrer at Marine Safety Unit Cleveland's Waterways Management Division; telephone 216–937–0111, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce multiple safety zones for annual events in the Captain of the Port Eastern Great Lakes Zone listed in 33 CFR 165.939, Table 165.939 for events occurring in the month of July listed next.

(b)(4) Downtown Cleveland Alliance July 4th Fireworks (City of Cleveland July 4th Fireworks)—from 9:30 p.m. through 11:00 p.m. on July 04, 2024

(b)(5) Mentor Harbor Yacht Club Fireworks (Mentor Harbor Yacht Club)—from 9:00 p.m. through 11:00 p.m. on July 03, 2024

(b)(6) Parade of Lights (Whiskey Island Boat Club Parade of Lights)—from 9:00 p.m. through 11:30 p.m. on July 20, 2024

(b)(7) Lorain Independence Day Celebration (Lorain Independence Day)—from 9:00 p.m. through 10:30 p.m. on July 04, 2024

(b)(8) Conneaut Festival (Conneaut Red, White, and Boom Over Lake Erie)—from 9:30 p.m. through 10:45 p.m. on July 6, 2024

(b)(9) Fairport Harbor Mardi Gras—from 9:30 p.m. through 11:00 p.m. on July 07, 2024

(b)(10) Sheffield Lake Community Days (Sheffield Lake Annual Community Days Festival)—from 9:30 p.m. through 11:00 p.m. on July 19, 2024

(b)(11) Bay Village Independence Day Celebration—from 9:30 p.m. through 11:30 p.m. on July 04, 2024

(b)(30) Wine and Walleye Festival Fireworks (Wine and Walleye Fireworks)—from 8:30 p.m. through 11:30 p.m., on July 27, 2024.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Eastern Great Lakes or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Eastern Great Lakes via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Eastern Great Lakes or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Eastern Great Lakes determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone. This notification is being issued by the Coast Guard Sector Eastern Great Lakes Prevention Department Head at the direction of the Captain of the Port.

Dated: May 3, 2024.

J.B. Bybee,

Commander, U.S. Coast Guard, Sector Eastern Great Lakes Prevention Department Head.

[FR Doc. 2024–10978 Filed 5–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0352]

Special Local Regulations; Annual Events Within the Captain of the Port Eastern Great Lakes Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce certain safety zones located in the federal regulations for Annual Events in the Captain of the Port Eastern Great Lakes Zone. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after these events. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Eastern Great Lakes or their designated representative.

DATES: The regulations in 33 CFR 165.939 as listed in Table 165.939 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, contact LT William Kelley, Chief of Waterways Management, Sector Eastern Great Lakes, U.S. Coast Guard; telephone 716–253–7299, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following safety zones regulations in 33 CFR 165.939 Table 165.939 for the following events during the dates and times listed. The locations are also provided for your information.

1. *Hope Chest Buffalo Niagara Dragon Boat Festival;* The safety zone listed in (a)(6) will be enforced on all U.S. waters of the Buffalo River, Buffalo, NY starting at position 42°52′12.0″ N, 078°52′17.0″ W then Southeast to 42°52′03.0″ N, 078°52′12.0″ W then East to 42°52′03.0″ N, 078°52′10.0″ W then Northwest to

42°52′13.0″ N, 078°52′16.0″ W and then returning to the point of origin from 7:45 a.m. through 5:45 p.m. on June 15, 2024.

2. A *Salute to our Heroes (Centennial Bash);* The safety zone listed in (a)(23) will be enforced on all U.S. waters of Lake Ontario within a 280-foot radius of land position 43°21′51.9″ N, 077°56′59.6″ W in Hamlin, NY from 9:45 p.m. through 11:15 p.m. on June 29, 2024.

3. *Town of Newfane Annual Fireworks Show, Olcott, NY;* The safety zone listed in (b)(24) will be enforced on all U.S. waters of Lake Ontario within a 560-foot radius of land position 43°20′23.6″ N, 078°43′09.5″ W in Olcott, NY from 9:45 p.m. through 10:45 p.m. on July 3, 20244. City of Erie 4th of July Fireworks, Erie, PA; The safety zone listed in (b)(31) will be enforced on all waters of Lake Erie contained within a 280-foot radius of the fireworks launch site located at 42°08′19.87″ N, 080°05′29.54″ W in Erie, PA from 9:15 p.m. through 10:45 p.m. on July 3, 2024.

5. *Hamburg Beach Blast Fireworks Display, Hamburg, NY;* The safety zone listed in (b)(33) will be enforced on all U.S. waters of Lake Erie contained within a 280-foot radius of 42°45′59.21″ N, 078°52′41.51″ W in Hamburg, NY from 9:45 p.m. through 10:45 p.m. on July 27, 2024.

6. *Thunder on the Niagara Hydroplane Boat Races, North Tonawanda, NY*; The safety zone listed in (c)(4) will be enforced on all U.S. waters of the Niagara River near the North Grand Island Bridge, encompassed by a line starting at 43°03′32.9″ N, 078°54′46.9″ W to 43°03′14.6″ N, 078°55′16.0″ W then to 43°02′39.7″ N, 078°54′13.1″ W then to 43°02′59.9″ N, 078°53′42.0″ W and returning to the point of origin from 8:15 a.m. through 5:45 p.m. on both August 3, 2024 and August 4, 2024.

This Notice of Enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Eastern Great Lakes or their designated representative; designation need not be in writing. Those seeking permission to enter these safety zones may request permission from the Captain of the Port Eastern Great Lakes via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Eastern Great Lakes or their designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement periods via Broadcast Notice to Mariners or other suitable means. If the Captain of the Port Eastern Great Lakes determines that the safety zone need not be enforced for the full duration stated in this notice, they may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone. This notification is being issued by the Coast Guard Sector Eastern Great Lakes Prevention Department Head at the direction of the Captain of the Port.

Dated: May 14, 2024.

J.B. Bybee,

Commander, U.S. Coast Guard, Sector Eastern Great Lakes Prevention Department Head.

[FR Doc. 2024–10994 Filed 5–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0395]

Safety Zones; Annual Events in the Captain of the Port Eastern Great Lakes Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce multiple safety zones located in federal regulations for recurring marine events taking place in June 2024. This action is necessary and intended for the safety of life and property on navigable waters during these events. During the enforcement periods, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Eastern Great Lakes or a designated representative.

DATES: The regulations listed in 33 CFR 165.939 Table 165.939, will be enforced in June for the following safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Cody Mayrer at Marine Safety Unit Cleveland's Waterways Management Division; telephone 216–937–0111, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce multiple safety zones for annual events in the Captain of the Port Eastern Great Lakes Zone listed in 33 CFR 165.939, Table 165.939 for events occurring in the month of June as listed next.

The safety zone for Table 165.939(a)(1) Festival of the Fish (Festival of the Fish Fireworks) will be enforced from 9 p.m. through 11:30 p.m. on June 14, 2024. The safety zone in Table 165.939(a)(7) Blazing Paddles (Blazing Paddles Paddlefest 2024) will be enforced from 7:30 a.m. through 3 p.m. on June 22, 2024. The safety zone in Table 165.939(b)(12) Lake Erie Open Water Swim (2024 Brogan Open Water Classic) will be enforced from 6:30 a.m. through 11:30 a.m. on June 29, 2024.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Eastern Great Lakes or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Eastern Great Lakes via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Eastern Great Lakes or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Eastern Great Lakes determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone. This notification is being issued by the Coast Guard Sector Eastern Great Lakes Prevention Department Head at the direction of the Captain of the Port.

Dated: May 3, 2024.

J.B. Bybee,

Commander, U.S. Coast Guard, Sector Eastern Great Lakes Prevention Department Head.

[FR Doc. 2024–10979 Filed 5–20–24; 8:45 am]

BILLING CODE 9110–04–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 715 and 752

RIN 0412–AA88

U.S. Agency for International Development Acquisition Regulation; Administrative Updates: Correction

AGENCY: U.S. Agency for International Development.

ACTION: Direct final rule; correction.

SUMMARY: On January 23, 2024, the U.S. Agency for International Development (USAID) issued a direct final rule revising the Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with Federal and agency regulations, remove obsolete material and internal agency procedures, and make editorial amendments to clarify the regulation. This document makes two corrections to the rule.

DATES: Effective May 22, 2024.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, 202–916–2622, *policymailbox@usaid.gov.*

SUPPLEMENTARY INFORMATION: On January 23, 2024, at 89 FR 4201, the U.S. Agency for International Development (USAID) issued a direct final rule. This document makes corrections to the amendments to sections 715.604 and 752.222–71.

Correction

In the FR Doc. No. 2023–27953, appearing on page 4201 in the **Federal Register** issue of Tuesday, January 23, 2024, USAID is making the following corrections:

715.604 [Corrected]

■ 1. On page 4206, in the first column, section 715.604 is corrected by revising paragraph (a) to read as follows:

''(a) USAID's Industry Liaison, Bureau for Management, Office of Acquisition and Assistance, manages the receipt and evaluation of unsolicited proposals. Unsolicited proposals may be submitted via: *https://www.workwithusaid.gov/unsolicited-submissions.*''

752.222–71 [Corrected]

■ 2. On page 4208, in the second column, in section 752.222–71, under ''Nondiscrimination (May 2024)'', in the third sentence, after ''genetic information'', remove ''religion,''.

Jami J. Rodgers,

Chief Acquisition Officer.

[FR Doc. 2024–11061 Filed 5–20–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240514–0137]

RIN 0648–BM47

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2024 Specifications and Management Measures

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

ACTION: Final rule.

SUMMARY: Through this final rule, NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for the season beginning May 16, 2024, and ending May 15, 2025 (the 2024 ocean salmon fishing season), under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The fishery management measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, harvest guidelines, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. Exclusive Economic Zone (EEZ) off Washington, Oregon, and California. The management measures are intended to prevent overfishing while achieving, on a continuing basis, the optimum yield from the fishery, and to apportion the ocean harvest equitably among treaty Indian, and non-Indian commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement, comply with applicable law, and to provide fishing opportunity for fisheries occurring in State waters.

DATES: This final rule is effective from 0001 hours Pacific Daylight Time, May 16, 2024, until the effective date of the 2025 management measures, as published in the **Federal Register**, which we expect to be 0001 hours Pacific Daylight Time May 16, 2025.

ADDRESSES: The documents cited in this document are available on the Pacific Fishery Management Council's (Council's) website (*www.pcouncil.org*).

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–980–4239, Email: *Shannon.Penna@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ (3–200 nautical miles (nmi); 5.6–370.4 kilometers (km)) off the coasts of Washington, Oregon, and California are managed under the Pacific Coast Salmon Fishery Management Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures within limits set by the FMP by notification in the **Federal Register**. Regulations at 50 CFR 660.408 govern the establishment of annual management measures.

This rule implements the management measures for the 2024 ocean salmon fishing season.

Process Used To Establish 2024 Management Measures

Ocean salmon fishery management measures are established via a collaborative process with the Council, States, tribes, fishing industry participants, anglers, and the public. The Council announced its annual preseason management process for the 2024 ocean salmon fishing season in the **Federal Register** on February 13, 2024 (89 FR 10042). NMFS published an additional notice of opportunity to submit public comments on the 2024 ocean salmon fishery management measures in the **Federal Register** on March 12, 2024 (89 FR 17834). These notices announced the availability of key documents, the dates and locations of meetings and public hearings regarding determining the annual proposed and final modifications to ocean salmon fishery management measures, and instructions on how to comment on those measures. The agendas for the March and April Council meetings were published in the **Federal Register** (89 FR 12319, February 16, 2024, and 89 FR 19815, March 20, 2024), and posted on the Council's website prior to the meetings.

In accordance with the FMP, the Council's Salmon Technical Team (STT) and economist prepared four reports for the Council, its advisors, and the public. All four reports were made available on the Council's website upon their completion. The first of the reports, ''Review of 2023 Ocean Salmon Fisheries,'' was prepared in February when the first increment of scientific information necessary for crafting management measures for the 2024 ocean salmon fishing season became available. The first report summarizes biological and socio-economic data from the 2023 ocean salmon fisheries and assesses the performance of the fisheries

with respect to the 2023 management objectives for salmon stocks and stock complexes as well as provides historical information for comparison. The second report, ''Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2024 Ocean Salmon Fishery Regulations'' (PRE I), provides the 2024 salmon stock abundance projections and analyzes how the salmon stocks defined in the FMP and Council management goals would be affected if the 2023 management measures (the No-Action Alternative under the National Environmental Policy Act (NEPA)) were continued for the 2024 ocean salmon fishing season. The completion of PRE I is the initial step in developing and evaluating the full suite of preseason alternatives.

Following the completion of the first two reports, the Council met from March 5 to 11, 2024, to develop 2024 management alternatives for proposal to the public and consideration under NEPA. The Council proposed three alternatives for commercial and recreational fisheries management and three alternatives for treaty Indian fisheries management for analysis and public comment. These alternatives consisted of various combinations of management measures designed to ensure that stocks of coho and Chinook salmon meet conservation goals, to provide for ocean harvests of more abundant stocks, to provide equitable sharing of harvest among ports and gear sectors, and to provide for the exercise of Indian treaty fishing rights. After the March Council meeting, the Council's STT and economist prepared a third report, ''Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2024 Ocean Salmon Fishery Regulations'' (PRE II), which analyzes the effects of the proposed 2024 ocean salmon fishing season management alternatives.

The Council sponsored public hearings in person to receive testimony on the proposed alternatives on March 25, 2024, for Washington and California, and on March 26, 2024, for Oregon. In addition, the States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony. The Council also received public testimony at the March and April meetings and electronic submissions via the Council's electronic portal and via *https://www.regulations.gov*.

Members of several federally recognized tribes including tribes with treaty rights for salmon harvest testified at the March and April Council meetings. Additional tribal comments were submitted in writing. Tribes emphasized the cultural importance of salmon to their communities, expressed concerns over the uncertainty of forecasts for some stocks in 2024, and urged the Council to be conservative in setting the salmon seasons. Some Tribes addressed several issues in the Columbia Basin such as habitat alteration and increase in avian predation. Tribes also expressed concerns that higher harvest levels could negatively impact hatchery brood collection and spawning escapement to local tributaries. Tribes are doing their part to improve habitat, raise hatchery fish, and expand the distribution of salmon to their historic production areas and want to ensure that the Council's actions are supporting those actions.

The Council adopted proposed 2024 ocean salmon management recommendations at its April meeting. The Council's STT and economist then prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2024 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socioeconomic effects of the Council's final recommendations (the Council's preferred alternative under NEPA). The Council transmitted the recommended management measures to NMFS on April 22, 2024, and published them on its website (*https://www.pcouncil.org*).

Under the FMP, the ocean salmon management cycle begins May 16 and continues through May 15 of the following year. This final rule is effective on May 16, 2024, consistent with the FMP, and governs most federally-managed ocean salmon fisheries. Fisheries that begin prior to May 16, 2024, are governed by the final rule implementing the salmon fishery management measures for the 2023 ocean salmon fishing season (88 FR 30235, May 11, 2023). Salmon fisheries scheduled to begin before May 16, 2024, under the 2023 rule, are:

- Commercial ocean salmon fisheries from the U.S./Canada border to the U.S./Mexico border,
- Recreational ocean salmon fisheries from Cape Falcon, OR, to Humbug Mountain, OR,
- Recreational ocean salmon fisheries from the Oregon/California border to the U.S./Mexico border, and
- Treaty Indian troll ocean salmon fisheries north of Cape Falcon.

Several fisheries scheduled to open between March 15, 2024, and May 15, 2024, were modified through inseason action to close the fisheries in response to updated salmon stock forecast information for 2024. For purposes of analyzing the impacts of these fisheries on individual stocks relative to the applicable objectives in the FMP, Council analysts assumed fisheries between March 15 to May 15, 2024, would be conducted under the 2023 management measures as modified by the subsequent inseason actions under 50 CFR 660.409.

National Environmental Policy Act

The environmental assessment (EA) for this action comprises the Council's documents described above (PRE I, PRE II, and PRE III), providing an analysis of environmental and socioeconomic effects under NEPA. The EA and its related Finding of No Significant Impact are posted on the NMFS West Coast Region (WCR) website (*https://www.fisheries.noaa.gov/s3/2024-05/ocean-salmon-fisheries-management-measures-ea-fonsi.pdf*).

Resource Status

Stocks of Concern

The FMP requires that the fisheries be managed to meet escapement-based annual catch limits (ACLs), Endangered Species Act (ESA) consultation requirements, obligations of the Pacific Salmon Treaty (PST) between the U.S. and Canada, and other conservation objectives. In addition, all regulations must be consistent with other applicable laws. The ocean salmon fisheries managed under the FMP are mixed-stock fisheries, and NMFS uses ''weak stock'' management to avoid exceeding limits for the stocks with the most constraining limits. Abundance forecasts for individual salmon stocks can vary significantly from one year to the next; therefore, the stocks that constrain the fishery in one year may differ from those that constrain the fishery in the next. For 2024, the stocks described below will constrain fisheries.

Fisheries south of Cape Falcon, Oregon, are limited in 2024 primarily by conservation concerns for Klamath River fall-run Chinook salmon (KRFC), Sacramento River fall-run Chinook salmon (SRFC), and Southern Oregon/Northern California Coast (SONCC) coho salmon. In 2018, NMFS determined that the KRFC stock was overfished, as defined under the MSA and the FMP. In 2024, KRFC continues to be overfished and is managed under a rebuilding plan (85 FR 75920, November 27, 2020).

Fisheries north of Cape Falcon are limited by conservation requirements for the natural spawning component of the ESA-listed lower Columbia River coho salmon (Lower Columbia Natural or LCN coho salmon) Evolutionarily

Significant Unit (ESU) and Puget Sound (PS) Chinook salmon stocks (see Table 3–1 in the FMP and NMFS' guidance letter to the Council, February 29, 2024). The limitations imposed to protect these stocks are described below. The management measures for 2024 are designed to avoid exceeding these limitations. Queets River spring/summer Chinook salmon continue to meet the criteria for being classified as overfished based on the most recent 3-year geometric mean of spawning escapement (2020–2022), and a rebuilding plan is currently under development. However, it was not a limiting stock in planning the 2024 ocean salmon fishing season.

KRFC (non-ESA-listed): Abundance for this non-ESA-listed stock in the last decade has been historically low, and the stock continues to meet the criteria for overfished based on spawning escapement in 2021, 2022, and 2023 and is managed under a rebuilding plan consistent with the requirements of the FMP. The FMP defines ''overfished'' status in terms of a 3-year geometric mean escapement level and whether it is below the minimum stock size threshold (MSST). The KRFC salmon stock has been below its conservation objective in 7 of the last 10 years and has been managed under *de minimus* exploitation rates that apply when forecast escapement is below the level associated with maximum sustainable yield (S_{MSY}) since 2020. Based on the current harvest control rule, the 2024 forecast allows only *de minimis* fishing this year, *i.e.,* a total allowable exploitation rate of 20 percent (including all ocean and river fisheries, including tribal fisheries). This limit will constrain fisheries south of Cape Falcon. The 2024 management measures are forecast to result in a spawning escapement of 36,511 KRFC natural spawners, which is above the stock's MSST (30,525). A natural-area escapement of 36,511 adults would represent the 26th lowest value over the past 47 years of data.

SRFC (non-ESA-listed): In 2021, NMFS declared the SRFC salmon stock rebuilt (87 FR 25429) due to several years of higher escapements; however, escapements in recent years have once again been low compared with the stock's conservation objective and caution is warranted to reduce the likelihood that the stock becomes overfished again. Spawner abundance has been below the escapement floor of 122,000 associated with the FMP objective in 5 of the last 8 years. The 3-year geometric mean of spawners is now 95,569 (2021, 2022, and 2023) as compared with the MSST of 91,500 at which the stock would meet the criteria of overfished. Commercial fisheries south of Cape Falcon will be heavily constrained in Oregon and closed in California owing to its low abundance forecast. The adopted management measures result in a projected escapement of 180,061, which exceeds the 2024 objective of 180,000 hatchery and natural area adult spawners. The Sacramento River also experienced low flows and high temperatures in recent years associated with decades of frequent droughts; these conditions have adversely affected the stock. The dominant year class contributing to 2024 fisheries was affected by below-average freshwater and early marine survival conditions.

SONCC coho salmon (ESA-listed threatened): The SONCC coho salmon ESU has been listed as threatened under the ESA since 1997. Conservation concerns for ESA-listed SONCC coho salmon will limit fisheries south of Cape Falcon in 2024. The SONCC coho salmon ESU consists of all naturally produced populations of coho salmon from coastal streams between Cape Blanco, OR, and Punta Gorda, CA, and limited artificial propagation programs. Under the FMP, ESA consultation standards are used to manage ESA-listed stocks, including SONCC coho salmon. In April 2022, the agency approved new harvest control rules that limited the total fishery (marine and freshwater) exploitation rate to 15 percent for all populations within the SONCC ESU except the Trinity River coho salmon population, which is limited to 16 percent. Coho salmon retention is prohibited in all California ocean salmon fisheries. Salmon in 2024 will be managed consistent with these harvest control rules.

Lower Columbia River (LC) coho salmon (ESA-listed threatened): The LC coho salmon ESU has been listed as threatened under the ESA since 2005. In 2015, NMFS conducted the most recent ESA section 7 consultation and issued a biological opinion regarding the effects of Federal fisheries and fisheries in the Columbia River on LC coho salmon. The opinion analyzed the use of a harvest matrix to manage impacts on LC coho salmon. As described above, the FMP manages LCN coho salmon, the natural component of the LC coho salmon ESU. Under the matrix, the allowable harvest in a given year depends on indicators of marine survival and parental escapement to spawning. In 2024, Federal ocean salmon fisheries and commercial and recreational salmon fisheries in State waters including the mainstem Columbia River below Bonneville Dam must be managed subject to a total exploitation rate limit on LCN coho salmon not to exceed 23 percent. In 2024, LCN coho salmon will constrain these salmon fisheries, particularly those north of Cape Falcon, such that, when combined with commercial and recreational fisheries in the mainstem Columbia River, the ESA requirement is met.

PS Chinook salmon (ESA-listed threatened): The PS Chinook salmon ESU was listed as threatened in 1999. Impacts from Federal fisheries are addressed through a 2004 biological opinion. Generally, these impacts are quite low and within the range contemplated in the 2004 opinion. However, because the PS Chinook salmon ESU is impacted by salmon fisheries in Puget Sound and associated freshwater fisheries (collectively referred to as ''inside'' fisheries), the impacts of Federal and State-water fisheries, including those in Puget Sound, on PS Chinook salmon are evaluated together, and that analysis forms the basis of a package of Puget Sound fisheries management measures to which the State of Washington and Indian tribes with treaty rights to fish in Puget Sound have agreed through a negotiation process, the North of Falcon forum, that runs concurrent with the Federal salmon season planning process. In 2024, fisheries north of Cape Falcon will be constrained so that, when combined with impacts from inside fisheries, conservation objectives for several populations (*e.g.,* Snohomish, Stillaguamish) in the PS Chinook salmon ESU at low abundance in 2024 are met.

Other Resource Issues

Southern Resident Killer Whale (SRKW) (ESA-listed endangered): The SRKW distinct population segment was listed under the ESA as endangered in 2005 (70 FR 69903, November 18, 2005). In 2021, NMFS approved amendment 21 to the FMP (86 FR 51017, September 14, 2021), which establishes a Chinook salmon annual abundance management threshold below which specific measures to limit the effects of the ocean salmon fishery on Chinook salmon prey availability for SRKWs are implemented. These measures include time and area closures, a quota limitation for the north of Cape Falcon management area, and temporal shifts in fishing. This forecast abundance compared with the Chinook salmon abundance threshold is reported annually in the above-referenced preseason reports as required by the FMP.

Because the pre-season estimate of the abundance of Chinook salmon in 2024 exceeds the threshold in the FMP, additional management measures are not required by the FMP including amendment 21 (Preseason Report III; PFMC 2024).

ACLs and Status Determination Criteria

ACLs are required for all stocks or stock complexes in the fishery that are not managed under an international agreement, listed under the ESA, or designated as hatchery stocks. For salmon, these reference points are defined in terms of spawner escapement. ACLs are set for two Chinook salmon stocks, SRFC and KRFC, and one coho salmon stock, Willapa Bay natural coho salmon. The SFRC and KRFCsalmon stocks are indicator stocks for the Central Valley Fall Chinook salmon complex and the Southern Oregon/Northern California Chinook salmon complex, respectively. The Far North Migrating Coastal Chinook salmon complex (FNMC) includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon and other fisheries that occur north of the U.S./Canada border. No ACL is set for FNMC stocks because they are managed subject to provisions of the PST between the U.S. and Canada (the MSA provides an international exception from ACL requirements that applies to stocks or stock complexes subject to management under an international agreement, which NMFS defines by regulation ''any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the U.S. is a party'' (50 CFR 600.310(h)(1)(ii)). Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery-produced and are managed consistent with ESA consultations, hatchery goals, or the provisions of the PST. Willapa Bay natural coho salmon is the only coho salmon stock for which an ACL is set, as the other coho salmon stocks in the FMP are either ESA-listed, hatchery-produced, or managed under the PST.

ACLs for salmon stocks are escapement-based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds. ACLs are set based on the annual potential spawner abundance forecast and a fishing rate reduced to account for scientific uncertainty. In addition to ACLs, SRFC and KRFC have conservation objectives expressed in terms of escapement goals that were developed prior to the requirement for ACLs. Where the conservation objectives exceed the ACLs, the management measures must achieve the conservation objectives.

For SRFC in 2024, the overfishing limit (OFL) is S_{OFL} = 213,622 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ (1 − 0.78) or 46,997 returning spawners (F_{MSY} is the fishing mortality rate that would result in maximum sustainable yield—MSY). S_{ABC} (the spawner escapement that is associated with the acceptable biological catch) is 213,622 multiplied by $1 - F_{ABC}$ (1 − 0.70) (F_{MSY} reduced for scientific uncertainty = 0.70) or 64,087. The S_{ACL} is set equal to S_{ABC}, *i.e.,* 64,087 spawners. The adopted management measures provide for a projected SRFC spawning escapement of 180,061.

For KRFC in 2024, S_{OFL} is 45,639 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ (1 − 0.71), or 13,235 returning spawners. S_{ABC} is 45,639 multiplied by $1 - F_{ABC}$ (1 − 0.68) (F_{MSY} reduced for scientific uncertainty = 0.68) or 14,605 returning spawners. S_{ACL} is set equal to S_{ABC}, *i.e.,* 14,605 spawners. The adopted management measures provide for a projected KRFC spawning escapement of 36,511.

For Willapa Bay natural coho salmon in 2024, S_{OFL} = 42,236 (potential spawner abundance forecast) multiplied by $1 - F_{MSY}$ (1 − 0.74) or 10,981 returning spawners. S_{ABC} is 42,236 multiplied by $1 - F_{ABC}$ (1 − 0.70) (F_{MSY} reduced for scientific uncertainty = 0.70) or 12,671. S_{ACL} is set equal to S_{ABC}, *i.e.,* 12,671 spawners. The adopted management measures provide for a projected Willapa Bay natural coho salmon spawning escapement of 29,512.

In summary, the 2024 management measures are expected to result in escapements greater than required to meet the ACLs for all three stocks with defined ACLs.

Public Comments

The Council invited written comments on developing 2024 salmon management measures in their notice announcing public meetings and hearings (89 FR 10042, February 13, 2024). At its March meeting, the Council developed three alternatives for 2024 commercial and recreational salmon management measures having a range of quotas, season structure, and impacts, from the least restrictive in Alternative I to the most restrictive in Alternative III, as well as three alternatives for 2024 North of Cape Falcon treaty Indian troll salmon management measures. These alternatives are described in detail in PRE II. Subsequently, comments were taken at three public hearings held in March, staffed by representatives of the Council, the States, and NMFS. The Council received 619 written comments via their electronic portal and 9 oral comments on 2024 ocean salmon fisheries including from members of the public that commented several times. The three public hearings were attended by a total of 125 people; 53 people provided oral comments. Comments came from individual fishers, fishing associations, fish buyers, processors, the general public, and conservation organizations. Written and oral comments addressed the 2024 management alternatives described in PRE II and generally expressed preferences for a specific alternative or for particular season structures. All written comments were made available via the Council's online briefing books for the March and April 2024 Council meetings. In addition to comments collected at the public hearings and those submitted directly to the Council, several people provided oral comments at the March and April 2024 Council meetings. Written and oral comments received were considered by the Council, which includes a representative from NMFS, in developing the recommended management measures transmitted to NMFS on April 22, 2024. NMFS also invited comments to be submitted directly to the Council or NMFS via the Federal Rulemaking Portal (*https://www.regulations.gov*) in a notice (89 FR 17834, March 12, 2024); NMFS received no comments via the Federal Rulemaking Portal.

Comments on alternatives for commercial salmon fisheries. Many written comments were from commercial salmon fishers from California. Of those written comments, the majority supported Alternative III (*i.e.,* closure of commercial salmon fishing). Those testifying on north of Cape Falcon commercial salmon fisheries at the Washington hearing supported the non-treaty quotas and season structure from Alternative I including the 85,000 total allowable catch for Chinook salmon and 105,000 coho salmon. Alternative I allows for increased access to the Chinook salmon total allowable catch (TAC) in the spring and to take advantage of market demands for troll-caught salmon. They also expressed support for inseason management as an invaluable tool to meet conservation objectives while allowing flexibility to attain the full quota. Those testifying on south of Cape Falcon commercial salmon fisheries at the Oregon hearing supported Alternative I and III. For Alternative III in the area from Cape Falcon to Humbug

Mountain, commenters requested that the Council consider a higher trip limit than the proposed 100 coho salmon. Due to a low participation rate and diminishing of the fleet, a higher trip limit would provide more opportunities to access the fish allocation. Those testifying at the California hearing largely supported Alternative III with a full closure given the low forecasts for California salmon stocks. This rule adopts commercial fishing measures north and south of Cape Falcon that are within the range of the alternatives considered.

Comments on alternatives for recreational fisheries. Those testifying on fishery management alternatives north of Cape Falcon favored Alternative I and opening the ocean recreational fishery as early as possible with a season structure that allowed for maximum opportunity and avoiding any early closures, particularly before September, noting the negative economic implications on businesses that support the fisheries. Those commenting on fishery alternatives south of Cape Falcon in Oregon expressed a range of opinions on the alternatives. For Alternatives I and III, the commenters were in favor of a mark-selective Chinook salmon opportunity rather than no Chinook salmon retention. In addition, one commenter expressed concerns over the level of the SRFC impacts going to the in-river fishery under Alternatives II and III which did not seem fair and equitable when compared to the level of SRFC impacts available to Oregon fisheries. Comments from California had mixed support for fishing under Alternative I or a closure of all areas under Alternative III. The Council adopted recreational fishing measures north and south of Cape Falcon that are within the range of alternatives considered.

Additional comments were made regarding the fisheries in southern Oregon from Cape Falcon to Humbug Mountain. We respond to key comments below.

Comment 1: The commenter noted that Alternative III for the Cape Falcon to Humbug Mountain commercial troll fishery provides for a September 1 to 30 non-mark-selective coho salmon season with a quota of 10,000 non-marked coho salmon (which means total harvest may exceed 10,000 coho salmon). The commenter asserted that to comply with the FMP section 5.3.2, any coho salmon allocation to the commercial troll fishery in September should be contingent upon sufficient coho salmon quota being first allocated to the recreational fishery to reasonably ensure completion of all scheduled recreational coho salmon fisheries.

Response: Ocean salmon fisheries are designed to ensure conservation goals for salmon stocks in the FMP, including ESA-listed stocks, are met. For 2024 ocean salmon fisheries, ESA-listed LC and SONCC coho salmon stocks constrained ocean salmon fisheries south of Cape Falcon. The goal in developing the 2024 salmon season was to provide opportunity and access to relatively healthy salmon runs coming back to Oregon while remaining within the overall management guidelines and ESA constraints. Provisions in section 5.3.2 state that the goals are to help secure recreational seasons extending at least from Memorial Day through Labor Day when possible, assist in maintaining commercial markets even at relatively low stock sizes, and fully utilize available harvest. To accomplish this, deviations from the allocation schedule are explicitly allowed under section 5.3.2 of the FMP to meet consultation standards for ESA-listed stocks. The alternative adopted by this rule provides for recreational coho salmon fishing in the Cape Falcon to Humbug Mountain area from June 15 through mid-August and during the month of September (or 25,000 coho salmon quota), 7 days per week during the open period. It also includes a non-mark-selective commercial troll coho salmon fishery from September 1 through the earlier of September 30 or a 2,500 coho salmon quota, much lower than the 10,000 quota included in Alternative III. The alternative adopted by this rule meets the provisions in section 5.3.2 of the FMP by providing for recreational fishing throughout most of the Memorial Day through Labor Day period and maintaining commercial markets in utilizing the available harvest given the constraints on the fishery to meet consultation standards for ESA-listed coho salmon stocks and to meet 2024 conservation objectives for KRFC and SRFC stocks.

Comment 2: Any measures to govern commercial troll fisheries in September and October in the area between Cape Falcon and Humbug Mountain should be adopted subject to potential additional management measures being implemented that are designed to address conservation concerns regarding Oregon Coast fall Chinook salmon stocks and the maintenance of traditional ocean and in-river fall recreational fisheries.

Response: Based on coded-wire tag recoveries in ocean and terminal fisheries and in escapement, more than 80 percent of the fishing-related mortality on Oregon Coast Chinook salmon stocks that occurs in all southern U.S. salmon fisheries occurs in State waters including in-river fisheries. In-river fisheries are managed by the Oregon Fish and Game Commission and are outside Federal jurisdiction. However, under the provisions of the FMP, states can propose to request changes to the ocean and recreational fisheries management measures via inseason action. Any inseason action must be consistent with escapement goals, conservation of the salmon resource, any federally recognized Indian fishing rights, applicable sharing provisions, and consideration of the factors listed in section 10.2 of the FMP.

Comment 3: One commenter expressed concerns over the large amount of SRFC harvest allocated to the in-river fishery under Alternatives II and III which, they argued, did not seem realistic, or fair and equitable. They observed that some stakeholders suggested that in-river harvest projections under Alternatives II and III implicitly incorporate additional conservation buffers for SRFC escapement because in-river fisheries are unlikely to be implemented that realize PRE II's projected harvest levels. If this is the case, any anticipated buffers and their impacts on conservation objectives should be explicitly discussed to foster a transparent public process.

Response: The measures in this final rule do not incorporate implicit or undisclosed buffers. The expectation that some in-river allocation would not be harvested in the interest of conservation of SRFC was clarified and discussed by the Council in adopting the final alternative. The California Department of Fish and Wildlife (CDFW) stated ''CDFW requested that the Council designed fisheries to minimize impacts in all Council-managed fisheries that encounter SRFC and KRFC stocks and it's CDFW's desire that all foregone harvest of these stocks be put towards escapement this fall.'' See Agenda Item E.6.a Supplemental CDFW Report 1: CDFW Letter to the Council. CDFW clarified during Council discussion that its intent was to close all salmon fishing in California waters and would make that recommendation to the California Fish and Game Commission which has jurisdiction over freshwater fisheries in California. The report clarified to the public that the intent of the CDFW was to forego in-river harvest of SRFC and to allow those fish to contribute to escapement. Consistent with the commenter's interest in a transparent process, that information was available for public comment

during Council discussion at the April meeting.

The final rule reflects consideration of these comments and generally includes aspects of all three alternatives, while considering the best available scientific information, the best use of limited opportunity given impacts to stocks of concern, and ensuring that fisheries are consistent with impact limits and accountability measures for ESA-listed species, ACLs, PST obligations, MSA requirements, and tribal fishing rights.

2024 Specifications and Management Measures

The ocean harvest levels and management measures for the 2024 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to provide harvest opportunity of natural and hatchery runs surplus to inside fishery and spawning needs. Based on the information provided in the four Council documents described above, the EA, and discussion at the Council meetings, and taking into account public comments, NMFS concludes the recommended measures are consistent with the requirements of the MSA, the ESA, U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. Accordingly, NMFS, through this final rule, approves and implements the Council's recommendations.

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before mid-May of the same year. Therefore, this action also establishes the early season fisheries that opens earlier than May 16, 2025. The commercial and recreational seasons will open in 2024 as indicated under the ''Season Description'' headings (in ''Section 1. Commercial, Non-Indian, Troll Fishery Management Measures'' and ''Section 2. Recreational Fishery Management'') of this final rule. NMFS may take inseason action to adjust the commercial and recreational seasons that occur prior to May 16, 2025, as needed. The Treaty Indian ocean troll seasons will open in 2025 as indicated under the ''Season Description'' headings (in ''Section 3. Treaty Indian Management Measures''). In 2025, the Treaty Indian ocean troll season will open May 1, consistent with all preseason regulations in place for Treaty Indian Troll fisheries during May 16–June 30, 2024. This opening could be modified via inseason action.

Sections 1, 2, and 3 below set out the final specifications and management measures for the commercial, recreational, and Treaty Indian ocean salmon fisheries for 2024 and, as specified, for 2025. Section 4 provides requirements for halibut retention; section 5 provides geographical landmarks; and section 6 specifies notice procedures for inseason modifications. Those elements of the measures set forth in sections 1 through 3 that refer to fisheries implemented prior to May 16, 2024, were promulgated in our 2023 rule (88 FR 29690, May 11, 2023), as modified by inseason action, and are included for information only and to provide continuity for the public and for states adopting conforming regulations each May that refer to the Federal rule for the same year.

Section 1. Commercial, Non-Indian Fishery Management Measures

Parts A, B, and C of this section contain the requirements for participation in the 2024 commercial, non-Indian, salmon troll fishery. Part A identifies fishing seasons and areas, from north to south, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies other requirements, definitions, restrictions, and exceptions.

Inseason modifications of the regulations may be necessary under certain conditions to fulfill objectives. Inseason actions include ''fixed'' or ''flexible'' actions as decribed in 50 CFR 660.409.

A. Season, Area, and Species Descriptions

—North of Cape Falcon, OR

May 16 through the earlier of June 29, or when NMFS announces the attainment of 24,600 Chinook salmon.

Catch limits in place for the following areas:

—U.S./Canada border to Queets River: 5,600 Chinook salmon.

—Leadbetter Point to Cape Falcon: 5,710 Chinook salmon.

Landing and possession limits are in place for the following areas. Landing week is Thursday through Wednesday. Landing limits will be evaluated weekly inseason.

Landing and possession limit of 150 Chinook salmon per vessel combined across all subareas per landing week.

—U.S./Canada border to Queets River: 60 Chinook salmon per vessel per landing week.

—Queets River to Leadbetter Point: 150 Chinook salmon per vessel per landing week.

—Leadbetter Point to Cape Falcon: 60 Chinook salmon per vessel per landing week.

Open 7 days per week. All salmon, except coho salmon.

If the Chinook salmon quota is exceeded, the excess will be deducted from the all-salmon season.

In 2025, the season will open May 1.

—U.S./Canada border to Leadbetter Point

July 1 through the earlier of September 15, or the U.S./Canada border to Cape Falcon quotas of 16,400 Chinook salmon or 15,200 marked coho salmon.

—Leadbetter Point to Cape Falcon

July 1 through the earlier of September 30, or the U.S./Canada border to Cape Falcon quotas of 16,400 Chinook salmon or 15,200 marked coho salmon.

Open 7 days per week. All salmon. All coho salmon must be marked with a healed adipose fin clip. No chum salmon retention north of Cape Alava, WA in August and September.

July 1–10: Landing possession limit of 70 Chinook salmon and 100 marked coho salmon per vessel for the open period.

Beginning July 11: Landing possession limit of 120 Chinook salmon and 100 marked coho salmon per vessel per landing week (Thursday–Wednesday).

Landing limits will be evaluated weekly inseason.

For all commercial troll fisheries north of Cape Falcon: Mandatory closed areas include the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA), Cape Flattery, and Columbia Control Zones. Grays Harbor Control Zone closed beginning August 12.

Vessels must land and deliver their salmon within 24 hours of any closure of this fishery.

Vessels may not land fish east of the Sekiu River or east of Tongue Point, OR.

Vessels fishing for or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license. For delivery to Washington ports south of Leadbetter Point, vessels must notify Washington Department of Fish and Wildlife (WDFW) at 360–249–1215 prior to crossing the Leadbetter Point line with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery. During any single trip, only one side of the Leadbetter Point line may be fished.

Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land all species of fish in Garibaldi, OR. All Chinook salmon caught north of Cape Falcon and being delivered by boat to Garibaldi, OR, must meet the minimum legal total length for Chinook salmon for south of Cape Falcon seasons unless the season in waters off Garibaldi, OR, have been closed for Chinook salmon retention for more than 48 hours (see C.1).

Under State law, vessels must report their catch on a State fish receiving ticket. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point and Cape Falcon to notify the Oregon Department of Fish and Wildlife (ODFW) within 1 hour of delivery or prior to transport away from the port of landing by either calling 541–857–2546 or sending notification via email to *nfalcon.trollreport@odfw.oregon.gov*. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts.

Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook salmon, coho salmon, and halibut catch abroad, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts.

Vessels fishing in a subarea north of Cape Falcon with a higher limit may transit through and land in a subarea with a lower limit. Prior to crossing the subarea line at Leadbetter Point or Queets River, vessels must notify WDFW at 360–249–1215 with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery.

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

April 16, 2024–May 29;
June 1–5; 12–16; 26–30;
July 26–30;
August 4–8;
September 1–October 31.

Open 7 days per week. All salmon, except coho salmon except for in the non-mark selective coho salmon fishery described below. All vessels fishing in the area must land their salmon in the State of Oregon.

Non-mark-selective coho salmon fishery:

September 1 through the earlier of September 30 or a 2,500 coho salmon quota, no more than 25 coho salmon allowed per vessel per landing week (Thursday–Wednesday). If the coho salmon quota is met prior to September 30, then all salmon except coho salmon season continues. Mandatory reporting is required as described below:

Under State law, vessels must report their catch on a State fish receiving ticket. Oregon State regulations require all fishers landing coho salmon in Oregon from any fishery between Cape Falcon and Humbug Mountain to notify ODFW within 1 hour of delivery or prior to transport away from the port of landing by either calling 541–857–2546 or sending notification via email to *nfalcon.trollreport@odfw.oregon.gov*. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

Beginning September 1, no more than 75 Chinook salmon allowed per vessel per landing week (Thursday–Wednesday).

In 2025, the season will open March 15 for all salmon except coho salmon. Gear restrictions same as in 2024.

—Humbug Mountain to Oregon/California border (Oregon Klamath Management Zone (KMZ))

April 16–30, 2024.

Open 7 days per week. All salmon, except coho salmon. All vessels fishing in the area must land their salmon in the State of Oregon.

In 2025, the season will open March 15 for all salmon except coho salmon. Gear restrictions same as in 2024.

—Oregon/California border to Humboldt South Jetty (California KMZ)

Closed in 2024.

In 2025, the season will open May 1 through the earlier of May 31, or a 3,000 Chinook salmon quota. Landing and possession limit of 25 Chinook salmon per vessel per week. Open 5 days per week (Friday–Tuesday). All salmon except coho salmon. Any remaining portion of Chinook salmon quotas may be transferred inseason on an impact neutral basis to the next open quota period. All fish caught in this area must be landed within the area, within 24 hours of any closure of the fishery and prior to fishing outside the area. Electronic Fish Tickets must be submitted within 24 hours of landing. Klamath Control Zone closed (see C.5.e). See California State regulations for an additional closure adjacent to the Smith River.

—Humboldt South Jetty to Latitude 40°10′ N

Closed in 2024.

—Latitude 40°10′ N to Point Arena (Fort Bragg)

Closed in 2024.

In 2025, the season opens April 16 for all salmon except coho salmon Gear restrictions same as in 2022. Harvest guidelines and vessel-based landing and possession limits may be considered inseason. Inseason action to close fisheries, modify season dates, or modify vessel-based landing and possession limits may be considered when total commercial harvest in this management area is approaching its harvest guideline.

Electronic Fish Tickets must be submitted within 24 hours of landing.

—Point Arena to Pigeon Point (San Francisco)

Closed in 2024.

In 2025, the season opens May 1 for all salmon except coho salmon. Gear restrictions same as in 2022. Inseason action to close fisheries, modify season dates, or modify vessel-based landing and possession limits may be considered when total commercial harvest in this management area is approaching its harvest guideline . Electronic Fish Tickets must be submitted within 24 hours of landing.

—Pigeon Point to the U.S./Mexico border (Monterey)

Closed in 2024.

In 2025, the season opens May 1 for all salmon except coho salmon. Gear restrictions same as in 2022. Harvest guidelines and vessel-based landing and possession limits may be considered inseason. Inseason action to close fisheries, modify season dates, or modify vessel-based landing and possession limits may be considered when total commercial harvest in this management area is approaching its harvest guideline. Electronic Fish Tickets must be submitted within 24 hours of landing.

When the fishery is closed from Humbug Mountain to the Oregon/California border and open to the south, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, OR,

prior to landing in California only if such vessels first notify the Chetco River U.S. Coast Guard (USCG) Station via very high frequency (VHF) channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival.

California State regulations require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the State (California Fish and Game Code section 8226).

B. Minimum Size (Inches)

TABLE 1—MINIMUM SIZE LIMITS FOR SALMON IN THE 2024 COMMERCIAL OCEAN SALMON FISHERIES

Area (when open)	Chinook salmon		Coho salmon		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR	27	20.5	16	12	None.
Cape Falcon to Humbug Mountain	28	21.5	16	12	None.
Humbug Mountain to OR/CA border	28	21.5	.....	.....	None.
OR/CA border to Humboldt South Jetty.					
Lat. 40°10′0″ N to Point Arena.					
Point Arena to Pigeon Point.					
Pigeon Point to U.S./Mexico border.					

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.5 cm, 26 in = 66 cm, 21.5 in = 54.6 cm, 20.5 in = 52.1 cm, 19.5 in = 49.5 cm, 16.0 in = 40.6 cm, and 12.0 in = 30.5 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 48 hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than 48 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Any person who is required to report a salmon landing by applicable State law must include on the State landing receipt for that landing both the number and weight of salmon landed by species. States may require fish landing/receiving tickets be kept on board the vessel for 90 days or more after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. Cape Falcon to the Oregon/California border: No more than four spreads are allowed per line.

c. Oregon/California border to U.S./Mexico border: No more than six lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

Trolling: Fishing from a boat or floating device that is making way by means of a source of power other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear: One or more lines that drag hooks behind a moving fishing vessel engaged in trolling. In that portion of the fishery management area off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread: A single leader connected to an individual lure and/or bait.

Circle hook: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Vessel Operation in Closed Areas With Salmon on Board

a. Except as provided under C.4.b below, it is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for a certain species of salmon while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species and no salmon are in possession.

b. When Genetic Stock Identification (GSI) samples will be collected in an area closed to commercial salmon fishing, the scientific research permit holder shall notify NOAA Office of Law Enforcement, USCG, CDFW, WDFW, ODFW, and Oregon State Police at least 24 hours prior to sampling and provide the following information: the vessel name, date, location, and time collection activities will be done. Any vessel collecting GSI samples in a closed area shall not possess any salmon other than those from which GSI samples are being collected. Salmon caught for collection of GSI samples must be immediately released in good condition after collection of samples.

C.5. Control Zone Definitions

a. Cape Flattery Control Zone—The area from Cape Flattery (48°23′00″ N lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10′00″ N lat.) and east of 125°05′00″ W long.

b. Salmon Troll Yelloweye Rockfish Conservation Area—The area in Washington Marine Catch Area 3 from 48°00.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°16.50′ W long. to 48°00.00′ N lat.; 125°16.50′ W long. and connecting back to 48°00.00′ N lat.; 125°14.00′ W long.

c. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N lat., 124°07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

d. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09″ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N lat.,124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between

the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nmi (11 km) north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nmi (22 km) off shore); and on the south by 41°26′48″ N lat. (approximately 6 nmi (11 km) south of the Klamath River mouth).

f. Waypoints for the 40-fathom (73-meter) regulatory line from Cape Falcon to Humbug Mountain (50 CFR 660.71 (o)(12)–(62)), when in place.

C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the USCG and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate number of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the USCG, vessels fishing south of the Oregon/California border must notify CDFW within 1 hour of leaving the management area by calling 800–889–8346 and providing the same information as reported to the USCG. All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Halibut Harvest

Permit applications for incidental harvest of halibut during commercial salmon fishing must be obtained from the NMFS WCR Permits Office.

a. Pacific halibut retained must be no less than 32 inches (81.3 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on.

b. During the salmon troll season, incidental harvest is allowed if quota is available. WDFW, ODFW, and CDFW will monitor landings. NMFS may make inseason adjustments to the landing restrictions to assure that the incidental harvest rate is appropriate for salmon and halibut availability, does not encourage target fishing on halibut, and does not increase the likelihood of exceeding the quota for this fishery, and may prohibit retention of halibut in the non-Indian salmon troll fishery if there is risk in exceeding the subquota for the salmon troll fishery or the non-tribal commercial fishery allocation. Inseason adjustments will be announced on the NMFS hotline (phone: 800–662–9825 or 206–526–6667). See the most current Pacific Halibut Catch Sharing Plan for more details.

c. Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2024, prior to any 2024 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2024.

d. Incidental Pacific halibut retention begins May 16, 2024, through the end of the 2024 salmon troll fishery, and April 1, 2025, until modified through inseason action or superseded by the 2025 management measures. Permit holders may land or possess no more than 1 Pacific halibut per 2 Chinook salmon, except 1 Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 35 halibut may be possessed or landed per trip.

e. ''C-shaped'' yelloweye rockfish conservation area is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington Marine Area 3), with the following coordinates in the order listed:

48°18′ N lat.; 125°18′ W long.;
48°18′ N lat.; 124°59′ W long.;
48°11′ N lat.; 124°59′ W long.;
48°11′ N lat.; 125°11′ W long.;
48°04′ N lat.; 125°11′ W long.;
48°04′ N lat.; 124°59′ W long.;
48°00′ N lat.; 124°59′ W long.;
48°00′ N lat.; 125°18′ W long.;
and connecting back to 48°18′ N lat.;
125°18′ W long.

C.8. Inseason Management

In addition to standard inseason actions or modifications:

a. Chinook salmon remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook salmon remaining from May, June, and/or July non-Indian commercial troll quotas in the Oregon or California KMZ may be transferred to the Chinook salmon quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer salmon between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. The Council will consider inseason recommendations for special regulations for any experimental fisheries annually in March; proposals must meet Council protocol and be received in November the year prior.

e. If retention of unmarked coho salmon (adipose fin intact) is permitted by inseason action, the allowable coho salmon quota will be adjusted to ensure preseason projected impacts on all stocks is not exceeded.

f. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

g. Deviations from the allocation of allowable ocean harvest of coho salmon in the area south of Cape Falcon may be allowed to meet consultation standards for ESA-listed stocks (FMP 5.3.2). Therefore, because 2024 fisheries are constrained to meet ESA-conservation objectives as described in the preamble to the rule, any rollovers resulting in a deviation from the south of Cape Falcon coho salmon allocation schedule would fall underneath this exemption.

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The State of Oregon may establish additional late-season fisheries in State waters.

b. The State of California may establish limited fisheries in selected State waters.

c. Check State regulations for details.

C.10. California KMZ Definition: The California KMZ for the ocean salmon season shall be that area from Humbug Mountain, OR, to Latitude 40°10′ N.

C.11. Latitudes for geographical reference of major landmarks along the West Coast are listed in section 5 of this final rule.

C.12. California 24-hour reporting requirements: Salmon harvested under quota or harvest limit regulations must be reported within 24 hours of landing via electronic fish tickets. Electronic fish tickets shall be completed at the

time of the receipt, purchase, or transfer of fish, whichever occurs first, and shall contain the number of salmon landed. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing. The electronic fish ticket is a web-based form submitted through the ''E-Tix'' application, managed by the Pacific States Marine Fisheries Commission and located at *https://etix.psmfc.org.*

Section 2. Recreational Fishery Management Measures

Parts A, B, and C of this section contain requirements for participation in the 2024 recreational ocean salmon fishery. Part A identifies fishing areas from north to south, the open seasons for the area, and the salmon species allowed to be caught during the seasons. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions, and exceptions. All measures are subject to inseason management.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada border to Cape Alava (Neah Bay Subarea)

June 22 through earlier of September 15, or 8,300 marked coho salmon subarea quota, with a subarea guideline of 9,430 Chinook salmon.

Open 7 days per week. All salmon, except no chum salmon beginning August 1; two salmon per day, of which only one may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip.

Beginning August 1, Chinook salmon non-retention east of the Bonilla-Tatoosh line during Federal ocean fishery

—Cape Alava to Queets River (La Push Subarea)

June 22 through earlier of September 15, or 2,070 marked coho salmon subarea quota, with a subarea guideline of 1,630 Chinook salmon.

Open 7 days per week. All salmon, except no chum salmon, beginning August 1; two salmon per day, of which only one may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip.

—Queets River to Leadbetter Point (Westport Subarea)

June 30–July 11 open 5 days per week (Sunday–Thursday);

July 14 through earlier of September 15, or 29,530 marked coho salmon subarea quota, with a subarea guideline of 17,430 Chinook salmon open 7 days per week.

All salmon, two salmon per day, no more than one of which may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip.

Prior to September 16, possession of salmon on board a vessel is prohibited on days when the subarea is closed to salmon retention.

Grays Harbor Control Zone closed beginning August 12.

—Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 22 through earlier of September 30, or 39,900 marked coho salmon subarea quota, with a subarea guideline of 12,510 Chinook salmon.

Open 7 days per week. All salmon, two salmon per day, no more than one of which may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip.

Columbia Control Zone closed.

South of Cape Falcon

—Cape Falcon to Humbug Mountain

March 15, 2024–October 31.

Open 7 days per week. All salmon except coho salmon, except as provided below during the all-salmon mark-selective coho salmon fishery and the non-mark-selective coho salmon fishery, two fish per day.

Beginning October 1, the fishery is only open shoreward of the 40-fathom (73-meters) management line.

In 2025, the season will open March 15 for all salmon except coho salmon, two salmon per day (see C.1). Same gear restrictions as in 2024.

Mark-selective coho salmon fishery:

—Cape Falcon to Oregon/California Border

Cape Falcon to Humbug Mountain: June 15 through the earlier of August 18, or the Cape Falcon to Oregon/California border quota of 45,000 marked coho salmon.

Humbug Mountain to Oregon/California border: June 15 through the earlier of August 4, or the Cape Falcon to Oregon/California border quota of 45,000 marked coho salmon.

Open 7 days per week. All salmon, two salmon per day. All retained coho salmon must be marked with a healed adipose fin clip.

Any remainder of the mark-selective coho salmon quota may be transferred inseason on an impact neutral basis to the September non-mark-selective coho salmon fishery from Cape Falcon to Humbug Mountain.

Non-mark-selective coho salmon fishery:

—Cape Falcon to Humbug Mountain

September 1 through the earlier of September 30, or 25,000 coho salmon quota.

Open 7 days per week. All salmon, two salmon per day.

—Humbug Mountain to Oregon/California border (Oregon KMZ)

May 16–August 31.

Open 7 days per week. All salmon except coho salmon, except as provided above during the mark-selective coho salmon fishery from Cape Falcon to the Oregon/California border (June 15–August 4), two salmon per day.

For recreational fisheries from Cape Falcon to Humbug Mountain: Fishing in the Stonewall Bank YRCA is restricted to trolling only on days the all-depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 for specific dates) (see C.3.b, C.4.d).

—Oregon/California border to latitude 40°10′ N (California KMZ)

Closed in 2024.

In 2025, the season opens April 5 for all salmon except coho salmon, two salmon per day. Gear restrictions same as in 2022 (see C.2, C.3). Inseason action to close fisheries, modify season dates, or modify the bag limit may be considered when sport harvest is approaching a harvest guideline.

—Latitude 40°10′ N to Point Arena (Fort Bragg)

Closed in 2024.

In 2025, the season opens April 5 for all salmon except coho salmon, two salmon per day. Gear restrictions same as in 2022. Inseason action to close fisheries, modify season dates, or modify the bag limit may be considered when sport harvest is approaching a harvest guideline.

—Point Arena to Pigeon Point (San Francisco)

Closed in 2024.

In 2025, the season opens April 5 for all salmon except coho salmon, two salmon per day. Gear restrictions same as in 2022.

—Pigeon Point to U.S./Mexico border (Monterey)

Closed in 2024.

In 2025, the season opens April 5 for all salmon except coho salmon, two salmon per day. Gear restrictions same as in 2022. Inseason action to close fisheries, modify season dates, or modify the bag limit may be considered when total sport harvest is approaching a harvest guideline.

California State regulations require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the State (California Code of Regulations, title 14, section 1.73).

B. Minimum Size (Total Length in Inches)

TABLE 2—MINIMUM SIZE LIMITS FOR SALMON IN THE 2024 RECREATIONAL SALMON FISHERIES

Area (when open)	Chinook salmon	Coho salmon	Pink salmon
North of Cape Falcon (Neah Bay and La Push)	24.0	16.0	None.
North of Cape Falcon (Westport and Columbia River)	22.0	16.0	None.
Cape Falcon to Humbug Mountain	24.0	16.0	None.
Humbug Mountain to Oregon/California border	24.0	16.0	None.
Oregon/California border to Point Arena			
Point Arena to Pigeon Point			
Pigeon Point to U.S./Mexico border			

Metric equivalents: 24.0 in = 61.0 cm, 22.0 in = 55.9 cm, 20.0 in = 50.8 cm, and 16.0 in = 40.6 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught. Salmon may not be filleted, or salmon heads removed prior to landing.

Ocean boat limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of Chinook salmon and coho salmon for all licensed and juvenile anglers aboard have been attained (additional State restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon and all persons fishing from a boat with salmon on board must meet the gear restrictions listed below for specific areas or seasons.

a. U.S./Canada border to Point Conception, CA: No more than one rod may be used per angler; and no more than two single point, single shank, barbless hooks are required for all fishing gear.

b. Latitude 40°10′ N to Point Conception, CA: Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed 5 inches (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. Recreational fishing gear: Off Oregon and Washington, angling tackle consists of a single line that must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed 4 pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. Trolling: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. Circle hook: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. The Bonilla-Tatoosh Line: A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N lat., 124°44′12″ W long.) to the buoy adjacent to Duntze Rock (48°24′37″ N lat., 124°44′37″ W long.), then in a straight line to Bonilla Point (48°35′39″ N lat., 124°42′58″ W long.) on Vancouver Island, British Columbia.

b. Grays Harbor Control Zone: The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N lat., 124°07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

c. Columbia Control Zone: An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09″ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N lat., 124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long. and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. Stonewall Bank YRCA: The area defined by the following coordinates in the order listed:

44°37.46′ N lat.; 124°24.92′ W long.
44°37.46′ N lat.; 124°23.63′ W long.
44°28.71′ N lat.; 124°21.80′ W long.
44°28.71′ N lat.; 124°24.10′ W long.
44°31.42′ N lat.; 124°25.47′ W long.
and connecting back to 44°37.46′ N lat.; 124°24.92′ W long.

e. Klamath Control Zone: The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nmi (11 km) north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nmi (22 km) offshore); and, on the south by 41°26′48″ N lat. (approximately 6 nmi (11 km) south of the Klamath River mouth).

f. Waypoints for the 40-fathom (73-meters) regulatory line from Cape Falcon to Humbug Mountain (50 CFR 660.71(o)(12) through (62)), when in place.

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing. Any changes will be communicated via telephone hotline numbers 206–526–6667 and 800–662–9825, and by USCG Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

a. Coho salmon may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook salmon and coho salmon may be transferred between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the representatives of the SAS, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. Fishery managers may consider inseason action modifying regulations restricting retention of unmarked (adipose fin intact) coho salmon. To remain consistent with preseason expectations, any inseason action shall consider, if significant, the difference between observed and preseason forecasted (adipose-clipped) mark rates. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho salmon.

d. Marked coho salmon remaining from the Cape Falcon to Oregon/California border. A recreational mark-selective coho salmon quota may be transferred inseason to the Cape Falcon to Humbug Mountain non-mark-selective recreational fishery if the transfer would not result in exceeding preseason impact expectations on any stocks.

f. Deviations from the allocation of allowable ocean harvest of coho salmon in the area south of Cape Falcon may be allowed to meet consultation standards for ESA-listed stocks (FMP 5.3.2). Therefore, because 2024 fisheries are constrained to meet ESA-conservation objectives as described in the preamble to the rule, any rollovers resulting in a deviation from the south of Cape Falcon coho salmon allocation schedule would fall underneath this exemption.

C.6. Additional Seasons in State Territorial Waters

The States of Washington, Oregon, and California may establish limited seasons in State waters. Check State regulations for details.

Section 3. Treaty Indian Management Measures

Parts A, B, and C of this section contain requirements that must be followed for lawful participation in the 2024 Treaty Indian salmon fishery.

In 2025, the season will open May 1, consistent with all preseason regulations in place for Treaty Indian troll fisheries during May 16–June 30, 2024. All catch in May 2025 applies against the 2025 Treaty Indian Troll fisheries quota.

A. Season Descriptions

May 1 through the earlier of June 30 or 21,250 Chinook salmon quota.

All salmon may be retained except coho salmon. If the Chinook salmon quota is exceeded, the excess will be deducted from the later all-salmon season. See size limit and other restrictions.

July 1 through the earlier of September 15, or 21,500 Chinook salmon quota or 42,500 coho salmon quota.

All salmon. See size limit and other restrictions.

B. Minimum Size (Inches)

TABLE 3—MINIMUM SIZE LIMITS FOR SALMON IN THE 2024 TREATY INDIAN OCEAN SALMON FISHERIES

Area (when open)	Chinook salmon		Coho salmon		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	24.0	18.0	16.0	12.0	None.

Metric equivalents: 24.0 in = 61.0 cm, 18.0 in = 45.7 cm, 16.0 in = 40.6 cm, 12.0 in = 30.5 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (defined to include those waters of Puget Sound easterly of a line projected from the Bonilla Point light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery and westerly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River [Washington Administrative Code 220–301–030]).

MAKAH—Washington State Statistical Area 4B and that portion of the Fishery Management Area (FMA) north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.

QUILEUTE—A polygon commencing at Cape Alava, located at lat. 48°10′00″ N, long. 124°43′56.9″ W; then proceeding west approximately 40 nmi (74 km) at that latitude to a northwestern point located at lat. 48°10′00″ N, long. 125°44′00″ W; then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 40 nmi (74 km) from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at lat. 47°31′42″ N, long. 125°20′26″ W; then proceeding east along that line of latitude to the Pacific coast shoreline at lat. 47°31′42″ N, long. 124°21′9.0″ W.

HOH—A polygon commencing at the Pacific coast shoreline near the mouth of the Quillayute River, located at lat. 47°54′30″ N, long. 124°38′31″ W; then proceeding west approximately 40 nmi (74.08 km) at that lat. to a northwestern point located at lat. 47°54′30″ N, long. 125°38′18″ W; then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 40 nmi (74.08 km) from the mainland Pacific coast shoreline, to a point located at lat. 47°31′42″ N, long. 125°20′26″ W, then proceeding east along that line of lat. approximately 10 nmi (18.52 km) to a point located at latitude 47°31′42″ N, long. 125°5′48″ W, then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 30 nmi (55.56 km) from the mainland Pacific coast shoreline to a point located at lat. 47°21′00″ N, long. 125°2′52″ W; then

proceeding east along that line of lat. to the Pacific coast shoreline near the mouth of the Quinault River, located at lat. 47°21′00″ N, long. 124°18′8″ W.

QUINAULT—A polygon commencing at the Pacific coast shoreline near Destruction Island, located at lat. 47°40′06″ N, long. 124°23′51.362″ W; then proceeding west approximately 30 nmi (55.6 km) at that latitude to a northwestern point located at lat. 47°40′06″ N, long. 125°08′30″ W; then proceeding in a southeasterly direction mirroring the coastline no farther than 30 nm (55.6 km) from the mainland Pacific coast shoreline at any line of latitude to a southwestern point at lat. 46°53′18″ N, long. 124°53′53″ W; then proceeding east along that line of latitude to the Pacific coast shoreline at lat. 46°53′18″ N, long. 124°7′36.6″ W.

C.2. Gear Restrictions

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand-held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.)

C.3. Quotas

a. The quotas include troll catches by the S'Klallam and Makah Tribes in Washington State Statistical Area 4B from May 1 through the earlier of September 15.

b. The Quileute Tribe may continue a ceremonial and subsistence fishery during the time frame of October 1 through October 15 in the same manner as in 2004—2015. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2024 season (estimated harvest during the October ceremonial and subsistence fishery: 20 Chinook salmon; 40 coho salmon).

c. The treaty troll tribes may conduct an experimental fishery through the month of September for gathering GSI data to inform potential impacts in future years of the treaty Indian ocean troll fishery. Potential impacts from this non-retention experimental fishery are accounted for in the modeling associated with the treaty Indian ocean troll fishery.

C.4. Area Closures

a. The area within a 6 nmi (11 km) radius of the mouths of the Queets River (47°31′42″ N lat.) and the Hoh River (47°45′12″ N lat.) will be closed to commercial fishing.

b. A closure within 2 nmi (3.7 km) of the mouth of the Quinault River (47°21′00″ N lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.5. Inseason Management

In addition to standard inseason actions or modifications already noted under the ''Season Description'' heading above, the following applies:

a. Chinook salmon remaining from the May through June treaty-Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

Section 4. Halibut Retention

Vessels participating in the salmon troll fishery in Area 2A that have obtained the appropriate permit may retain halibut caught incidentally during authorized periods in conformance with provisions published with the Pacific Halibut Fisheries Catch Sharing Plan 2024 annual management measures (89 FR 19275, March 18, 2024). A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

Permit applications for incidental harvest must be obtained from the WCR Permits Office (phone: 562–980–4238 or *wcr-permits@noaa.gov*). No 2024 permits are available; applicants must apply prior to March 1 for 2025 permits. If the sub-quota for this fishery has not been harvested during the April-June portion of the salmon troll fishery, then incidental halibut harvest will be allowed in July and continue until the amount of halibut that was initially available as the quota for the troll fishery is taken or until the end of the season date for commercial halibut is determined by NMFS and implemented in the **Federal Register** (typically early October). If the landings are projected to exceed the 44,001 pounds (19,959 kg) preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

Incidental halibut harvest regulations, including season dates, management measures, and TAC for each International Pacific Halibut Commission (IPHC) management area, are listed under C.7 of section 1 (Commercial, Non-Indian, Troll Fishery Management Measures).

Section 5. Geographical Landmarks

Geographical landmarks referenced in this document are at the following locations:

U.S./Canada border	49°00′00″ N lat.
Cape Flattery, WA	48°23′00″ N lat.
Cape Alava, WA	48°10′00″ N lat.
Queets River, WA	47°31′42″ N lat.
Leadbetter Point, WA	46°38′10″ N lat.
Cape Falcon, OR	45°46′00″ N lat.
South end Heceta Bank Line, OR.	43°58′00″ N lat.
Humbug Mountain, OR	42°40′30″ N lat.
Oregon-California border	42°00′00″ N lat.
Humboldt South Jetty, CA	40°45′53″ N lat.
40°10′ line (near Cape Mendocino, CA).	40°10′00″ N lat.
Horse Mountain, CA	40°05′00″ N lat.
Point Arena, CA	38°57′30″ N lat.
Point Reyes, CA	37°59′44″ N lat.
Point San Pedro, CA	37°35′40″ N lat.
Pigeon Point, CA	37°11′00″ N lat.
Point Sur, CA	36°18′00″ N lat.
Point Conception, CA	34°27′00″ N lat.
U.S./Mexico border	34°27′00″ N lat.

Section 6. Inseason Notice Procedures

Notice of inseason management actions will be provided by a telephone hotline administered by the WCR, NMFS, 800–662–9825 or 206–526–6667, and by USCG Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be published in the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or USCG broadcasts for current information for the area in which they are fishing.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the MSA. In a previous action taken pursuant to section 304(b), the Council designed the FMP to authorize NMFS to take this action pursuant to MSA section 305(d). See 50 CFR 660.408. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures would be impracticable and contrary to the public interest. The annual salmon management cycle begins May 16 and continues through May 15 of the following year. These

harvests constitute a relatively small portion of the annual catch, allowing for the majority of the season to be governed by the new management measures rule. The time frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from previous years observed spawning escapement, vary substantially from year to year and are not available until February because spawning escapement continues through the fall.

The planning and public review process associated with developing the regulations is initiated in February as soon as the forecast information becomes available. The process requires coordination of management actions of four States, numerous Indian tribes, and the Federal Government, as well as consideration of information from the Pacific Salmon Commission that is not available until April 1 of each year. All of these entities have management authority over the stocks. This complex process includes the affected user groups as well as the general public. Providing the opportunity for prior notice and public comments on the measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the 2-month period required for the development of the regulations. Delaying the implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 30–60 days would require that fishing regulations for May and June be set in the previous year, without the benefit of information regarding current stock abundance. For the 2024 fishing regulations, the current stock abundance was not available until February. In addition, information related to northern fisheries and stock status in Alaska and Canada, which is important to assess the amount of salmon available to U.S. ocean fisheries, is not available until April 1. Because a substantial amount of fishing normally occurs during late May and June, managing the fishery with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks. Although salmon fisheries that open prior to May 16 are managed under measures developed the previous year (with some inseason modifications), relatively little harvest occurs during that period (*e.g.,* on average, 10 percent of commercial and recreational harvest occurred prior to May 1 during the years 2011 through 2018). Allowing the much more substantial harvest levels normally associated with the late May and June salmon seasons to be promulgated under the prior year's regulations would impair NMFS' ability to protect weak and ESA-listed salmon stocks and to provide harvest opportunities where appropriate. The choice of May 16 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the salmon FMP and the need to manage the fishery using the best available scientific information.

If the 2024 measures are not in place on May 16, salmon fisheries will not open as scheduled. This would result in lost fishing opportunities, negative economic impacts, and confusion for the public as the State fisheries adopt concurrent regulations that conform to the Federal management measures.

In addition, these measures were developed with significant public input. As described above, oral and written public comment was received and considered throughout the process of developing these management measures. Based upon the above-described public comment already received and need to have these measures effective on May 16, NMFS has concluded it would be impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The Assistant Administrator for Fisheries also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness of this final rule. As previously discussed, data were not available until February, and management measures were not finalized until mid-April. These measures are essential to conserve threatened and endangered ocean salmon stocks as well as potentially overfished stocks, and to provide for the harvest of more abundant stocks. Delaying the date of effectiveness of these measures by 30 days could compromise the ability of some stocks to attain their conservation objectives, preclude harvest opportunity, and negatively impact anticipated international, State, and tribal salmon fisheries, thereby undermining the purposes of this agency action and the requirements of the MSA.

To enhance the fishing industry's notification of these new measures, and to minimize the burden on the regulated community required to comply with the new regulations, NMFS is announcing the new measures over the telephone hotline (800–662–9825 or 206–526–6667) used for inseason management actions and is posting the regulations on its WCR website (*https://www.fisheries.noaa.gov/region/west-coast*). NMFS is also advising the States of Washington, Oregon, and California of the new management measures. These States announce the seasons for applicable State and Federal fisheries through their own public notification systems.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 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 not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The current information collection approval expires on November 30, 2026. The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule was developed after meaningful consultation with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 15, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2024–11046 Filed 5–16–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 99
Tuesday, May 21, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1987; Project Identifier MCAI–2023–00807–T]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) to supersede Airworthiness Directive (AD) 2021–17–02, which applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. This action revises the NPRM by proposing additional modification of the affected wiring for certain airplanes. The FAA is proposing this AD to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by July 5, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1987; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1987.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1987; Project Identifier MCAI–2023–00807–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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 SNPRM 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 SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–17–02, Amendment 39–21685 (86 FR 48490, August 31, 2021) (AD 2021–17–02), for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2021–17–02 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0024, dated January 19, 2021, to correct false activation of the stall warning system due to wiring damage on the wire bundle between an angle of attack (AOA) probe and the crew alerting computer. AD 2021–17–02 requires a one-time inspection for discrepancies of the wire bundles between the left- and right-hand AOA probes and the crew alerting computer, and, depending on findings, applicable corrective actions. AD 2021–17–02 also requires, for certain airplanes, modifying the captain stick shaker wiring, and for all airplanes, revising the existing aircraft flight manual (AFM) and applicable

corresponding operational procedures to incorporate procedures for the stick pusher/shaker. AD 2021–17–02 superseded AD 2020–23–13, Amendment 39–21330 (85 FR 73407, November 18, 2020).

Actions Since AD 2021–17–02 Was Issued

Since the FAA issued AD 2021–17–02, EASA superseded AD 2021–0024, dated January 19, 2021, and issued EASA AD 2023–0134, dated July 5, 2023 (EASA AD 2023–0134), to correct an unsafe condition for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. EASA AD 2023–0134 states that final modification instructions of the affected wiring were developed.

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD to supersede AD 2021–17–02 that would apply to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. The NPRM published in the **Federal Register** on October 5, 2023 (88 FR 69102). In the NPRM, the FAA proposed to retain all of the requirements of AD 2021–17–02. The NPRM also proposed to require installing a new AOA power supply unit and removing the AFM amendment.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, EASA superseded EASA AD 2023–0134 and issued EASA AD 2023–0191, dated November 2, 2023 (EASA AD 2023–0191) (also referred to as the MCAI), to correct an unsafe condition for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. The MCAI states that since EASA AD 2023–0134 was issued, the manufacturer published ATR Service Bulletin ATR42–31–0121, Revision 2, dated September 13, 2023, which specifies additional wiring modification for certain airplanes.

The FAA is proposing this AD to address false activation of the stall warning system, which could result in loss of control of the airplane during take-off and landing phases. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1987.

Comments

The FAA received one comment, from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Additional Changes Made to This SNPRM

The FAA determined that the exception specified in paragraph (h)(4) of the proposed AD (in the NPRM) is not necessary because it would have required repairing all discrepancies before further flight, which is more restrictive than the MCAI. The FAA also determined that the exception specified in paragraph (h)(5) of the proposed AD (in the NPRM) is not necessary because it would have required amending ''applicable corresponding operational procedures,'' which the FAA has determined should not be an AD requirement. The FAA has removed both exceptions from this proposed AD and renumbered subsequent paragraphs accordingly.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–17–02, this proposed AD would retain all of the requirements of AD 2021–17–02. Those requirements are referenced in EASA AD 2023–0191, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0191 specifies procedures for a one-time inspection for discrepancies of the wire bundles between the left- and right-hand AOA probes and the crew alerting computer, and, depending on findings, applicable corrective actions (repair). EASA AD 2023–0191 also specifies procedures, for certain airplanes, for modifying the captain stick shaker wiring, and for all airplanes, revising the existing AFM to incorporate procedures for the stick pusher/shaker. Finally, EASA AD 2023–0191 specifies procedures for installing the AOA power supply unit, removing the AFM amendment, and accomplishing additional modification of the affected wiring. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this SNPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements in This SNPRM

This proposed AD would retain all of the requirements of AD 2021–17–02. This proposed AD would require accomplishing the actions specified in EASA AD 2023–0191 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

EASA AD 2023–0191 requires operators to amend the AFM to ''inform all flight crews'' of revisions to the AFM; and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require that operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0191 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0191 in its entirety through that incorporation, except for any differences identified as exceptions in the

regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0191 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0191. Service information required by EASA AD 2023–0191 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1987 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 26 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–17–02.	Up to 14 work-hours × $85 per hour = Up to $1,190.	$100	Up to $1,290	Up to $33,540.
New proposed actions	50 work-hours × $85 per hour = $4,250.	0	4,250	110,500.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–17–02, Amendment 39–21685 (86 FR 48490, August 31, 2021); and

■ b. Adding the following new Airworthiness Directive:

ATR—GIE Avions de Transport Régional: Docket No. FAA–2023–1987; Project Identifier MCAI–2023–00807–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 5, 2024.

(b) Affected ADs

This AD replaces AD 2021–17–02, Amendment 39–21685 (86 FR 48490, August 31, 2021) (AD 2021–17–02).

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments.

(e) Unsafe Condition

This AD was prompted by false activation of the stall warning system due to wiring damage on the wire bundle between an angle of attack (AOA) probe and the crew alerting computer, and the development of additional wiring modifications and an aircraft flight manual (AFM) update to address the unsafe condition. The FAA is issuing this AD to address this condition, which could result in loss of control of the airplane during take-off and landing phases.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0191, dated November 2, 2023 (EASA AD 2023–0191).

(h) Exceptions to EASA AD 2023–0191

(1) Where EASA AD 2023–0191 refers to October 27, 2020 (the effective date of EASA AD 2020–0221), this AD requires using December 3, 2020 (the effective date of AD 2020–23–13, Amendment 39–21330 (85 FR 73407, November 18, 2020)).

(2) Where EASA AD 2023–0191 refers to February 2, 2021 (the effective date of EASA AD 2021–0024), this AD requires using October 5, 2021 (the effective date of AD 2021–17–02).

(3) Where paragraph (2) of EASA AD 2023–0191 refers to ''discrepancies,'' for this AD, discrepancies include, but are not limited to, wire damage, missing or damaged conduits, and incorrect routing of wiring and conduits.

(4) Where paragraph (8) of EASA AD 2023–0191 specifies ''accomplish the additional work as identified in'' replace that text with ''accomplish the additional work as identified in section '1—ADDITIONAL WORK.' ''

(5) Where paragraphs (4) and (5) of EASA AD 2023–0191 specify to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions, as those actions are already required

by existing FAA operating regulations (see 14 CFR 91.9, 91.505, and 121.137).

(6) Where EASA AD 2023–0191 refers to its effective date, this AD requires using the effective date of this AD.

(7) Where EASA AD 2023–0191 refers to July 19, 2023 (the effective date of EASA AD 2023–0134), this AD requires using the effective date of this AD.

(8) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0191.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0191, dated November 2, 2023.

(ii) [Reserved]

(3) For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on May 15, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–11002 Filed 5–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1032

RIN 1506–AB66

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. BSA–1; File No. S7–2024–02]

RIN 3235–AN34

Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury; Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of the Treasury and the SEC are jointly issuing a proposed rulemaking implementing the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 with regard to certain investment advisers. If, as proposed in a separate rulemaking, certain investment advisers are included in the definition of ''financial institution'' under the Bank Secrecy Act, the Secretary of the Treasury and the SEC will be required to jointly prescribe a regulation that, among other things, requires investment advisers to implement reasonable procedures to verify the identities of their customers.

DATES: Written comments on this notice of joint proposed rulemaking (''NPRM'') must be submitted on or before July 22, 2024.

ADDRESSES:

Treasury: Comments may be submitted by any of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0011.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2024–0011.

Please submit comments by one method only.

SEC: Comments may be submitted to the SEC by any of the following methods:

Electronic Comments

- Use the SEC's internet comment forms (*https://www.sec.gov/rules/2024/05/cip*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–2024–02 on the subject line.

Paper Comments

- Send paper comments to Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–2024–02. This file number should be included on the subject line if email is used. To help the SEC process and review your comments more efficiently, please use only one method of submission. The SEC will post all comments on the SEC's website (*https://www.sec.gov/rules/2024/05/cip*). Comments also are available for website viewing and printing in the SEC'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. Operating conditions may limit access to the SEC's Public Reference Room. Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. The SEC may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the SEC or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.*gov to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the SEC's website (*https://www.sec.gov/rules/2024/05/cip*).

FOR FURTHER INFORMATION CONTACT:

Treasury: The FinCEN Resource Center at (800) 767–2825 or email *frc@fincen.gov.*

Securities and Exchange Commission: Daniel Levine, Attorney-Adviser; Tom Strumpf, Branch Chief; Adele Murray, Private Funds Attorney Fellow; or Melissa Roverts Harke, Assistant Director, Investment Adviser Rulemaking Office, at (202) 551–6787 or *IArules@sec.gov,* Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

Enacted in 1970, the Currency and Foreign Transactions Reporting Act, generally referred to as the Bank Secrecy Act (''BSA''), is designed to combat money laundering, the financing of terrorism, and other illicit finance activity, and to safeguard the national security of the United States.[1] The Secretary of the Treasury (''the Secretary'') delegated the authority to implement, administer, and enforce the BSA and its implementing regulations to the Director of FinCEN.[2]

Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT Act'') of 2001 added a subsection to the BSA, subsection (*l*) to 31 U.S.C. 5318, in order to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Subsection 31 U.S.C. 5318(*l*) requires the Secretary to ''prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.'' The regulations implementing section 326 must, at a minimum, ''require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (B) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.'' [3] These programs are referred to as Customer Identification Programs (''CIPs'') and are long-standing, foundational components of a financial institution's anti-money laundering program.

As enacted, section 326 applies to all ''financial institutions.'' This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks; agencies, and branches of foreign banks in the United States; thrift institutions, credit unions, and private bankers; trust companies; securities brokers and dealers registered with the Commission; investment companies; futures commission merchants; insurance companies; travel agencies; pawnbrokers; dealers in precious metals, stones, and jewels; check-cashers; certain casinos; and telegraph companies, among others.[4] The BSA also grants authority to the Secretary to define, by regulation, additional types of businesses as financial institutions where the Secretary determines that such businesses engage in any activity ''similar to, related to, or a substitute for'' those in which any of the businesses listed in the statutory definition are authorized to engage.[5] As part of the implementation, administration, and enforcement of the BSA, this authority has been delegated to the Director of FinCEN.[6]

On February 15, 2024, the Secretary, through FinCEN, proposed to designate certain investment advisers as ''financial institutions'' under the BSA and subject them to anti-money laundering/countering the financing of terrorism (''AML/CFT'') program requirements and Suspicious Activity Report (''SAR'') filing obligations, as well as other BSA requirements (''AML/CFT Program and SAR Proposed Rule'').[7] Although the Investment Advisers Act of 1940 (''Advisers Act'') and the rules thereunder apply to a wide range of investment advisers,[8] the AML/CFT Program and SAR Proposed Rule—and the rule proposed in this joint NPRM as well—would only apply to a narrower subset of persons meeting the Advisers Act definition of ''investment adviser'': [9] advisers registered or required to be registered with the SEC (referred to as ''registered investment advisers,'' or ''RIAs''), as well as those exempt from registration under sections 203(l) or 203(m) of the Advisers Act and applicable rules thereunder (referred to as ''exempt reporting advisers,'' or ''ERAs'').

In prescribing regulations for financial institutions implementing section 326, 31 U.S.C. 5318(l)(3) directs the Secretary to ''take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.'' [10] Further, 31 U.S.C. 5318(l)(4) requires that implementing regulations for certain types of financial institutions—which would include the set of investment advisers proposed to be added to the definition of ''financial institution'' through the AML/CFT Program and SAR Proposed Rule—be prescribed jointly with the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act).[11] The appropriate Federal functional regulator for investment

[1] *See* 31 U.S.C. 5311. Certain parts of the Currency and Foreign Transactions Reporting Act, as amended, and other statutes relating to the subject matter of that Act, have come to be referred to as the BSA. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 310, 5311–5314, 5316–5336, including notes thereto, with implementing regulations at 31 CFR chapter X.

[2] *See* Treasury Order 180–01, paragraph 3(a) (Jan. 14, 2020), available at *https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01.*

[3] 31 U.S.C. 5318(l)(2).

[4] *See* 31 U.S.C. 5312(a)(2), (c)(1); *see also* 31 CFR 1010.100(t) (defining ''financial institution'' for the purposes of the regulations implementing the BSA).

[5] *See* 31 U.S.C. 5312(a)(2)(Y).

[6] *See* Treasury Order 180–01, para. 3(a), *supra* n.2.

[7] *See* FinCEN, Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, Notice of Proposed Rulemaking, 89 FR 12108 (Feb. 15, 2024).

[8] Unless otherwise noted, when we refer to the Advisers Act, we are referring to 15 U.S.C. 80b, and when we refer to rules under the Advisers Act, we are referring to title 17, part 275 of the Code of Federal Regulations (17 CFR part 275).

[9] *See* 15 U.S.C. 80b–2(a)(11). Accordingly, references herein to ''investment advisers'' or ''advisers'' refer to RIAs and ERAs, unless stated otherwise.

[10] 31 U.S.C. 5318(l)(3).

[11] 31 U.S.C. 5318(l)(4) requires that any CIP requirement for financial institutions that engage in financial activities described in section 4(k) of the Bank Holding Company Act be prescribed jointly with each Federal functional regulator. This list of activities includes, among others, ''providing financial, investment, or economic advisory services.'' *See* 12 U.S.C. 1843(k)(4)(C). 15 U.S.C. 6809(2) lists the institutions that may be a Federal functional regulator. Adoption of this proposed rule would, therefore, depend on and not occur unless investment advisers are first designated as ''financial institutions'' for purposes of the BSA. Proposing CIP requirements while the AML/CFT Program and SAR Proposed Rule is under consideration gives affected parties an opportunity to consider the proposed elements of a CIP—as a CIP is statutorily required if investment advisers become ''financial institutions'' under the BSA—in the context of the AML/CFT Program and SAR Proposed Rule.

advisers is the SEC.[12] Thus, FinCEN and the SEC are issuing this proposed rule jointly.

While investment advisers have not been previously subject to CIP requirements, in certain circumstances, some investment advisers already obtain and conduct verification of customer identity information.[13] For example, some investment advisers may implement CIP requirements if the entity is also a registered broker-dealer[14] or a bank (*i.e.,* a dual registrant), or is an operating subsidiary of a bank;[15] other investment advisers are affiliates of banks or broker-dealers, which may implement an enterprise-wide AML/CFT program that includes a CIP. In addition, some investment advisers have already implemented voluntary AML/CFT programs that may include CIP measures.[16]

This proposed rule is generally consistent with existing rules requiring other financial institutions, such as brokers or dealers in securities, open-end investment companies (such as mutual funds),[17] credit unions, banks, and other financial institutions, to adopt and implement CIPs.[18] The similarity between this proposed rule and those rules reflects the importance that FinCEN and the SEC (''the Commission'') assign to the harmonization of CIP requirements, including for the purposes of increasing effectiveness and efficiency for investment advisers that are affiliated with other financial institutions, such as banks, broker-dealers, or open-end investment companies (such as mutual funds) that are already subject to CIP requirements. CIP requirements also support the application of other AML/CFT measures by making it more difficult for persons to use false identities to establish customer relationships with investment advisers for the purposes of laundering money, financing terrorism, or engaging in other illicit finance activity.

B. Codification of the Joint Proposed Rule

Under the proposed rule, the substantive requirements of the joint proposed rule would be codified with other BSA regulations as part of Treasury's proposed regulations in 31 CFR part 1032.

II. Section-by-Section Analysis

A. Definitions[19]

Section 1032.100(a) Account. The proposed rule would define ''account'' for the purposes of investment advisers' CIP obligations as any contractual or other business relationship between a person and an investment adviser under which the investment adviser provides investment advisory services.[20] The proposed definition excludes an account that an investment adviser acquires through an acquisition, merger, purchase of assets, or assumption of liabilities. Customers do not ''open'' such transferred accounts, and, therefore, these accounts do not fall within the scope of section 326.[21] Such accounts, however, may still be subject to other AML/CFT requirements applicable to advisory activities, including activities within the scope of the AML/CFT Program and SAR Proposed Rule, to the extent it is adopted.[22] Additionally, the definition of account would include accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974 (''ERISA''). While ERISA accounts are excluded from the definition of ''account'' in the CIP rules applicable to mutual funds,[23] they are not being excluded here to harmonize the applicability of this proposed rule with the AML/CFT Program and SAR Proposed Rule, which would require RIAs and ERAs to apply AML/CFT program and SAR reporting requirements to all of their accounts, including accounts opened for the purpose of participating in an employee benefit plan established pursuant to ERISA.

Section 1032.100(b) Commission. The proposed rule would define ''Commission'' to mean the United States Securities and Exchange Commission.

Section 1032.100(c) Customer. The proposed rule would define ''customer'' for the purposes of investment advisers' CIP obligations as a person—including a natural person or a legal entity—who opens a new account with an investment adviser. This means the

[12] *See* 15 U.S.C. 6809(2).

[13] This proposed rule uses the term ''customers'' for those natural and legal persons who enter into an advisory relationship with an investment adviser. This is consistent with the terminology in the BSA and FinCEN's implementing regulations. We acknowledge that the Advisers Act and its implementing regulations primarily use the term ''clients,'' and therefore, we use that term herein when making specific reference to Advisers Act requirements.

[14] *See* 31 CFR 1023.220 (CIP rule for broker-dealers).

[15] Banks are subject to their own CIP regulation. *See* 31 CFR 1020.220. Banks and bank subsidiaries subject to the jurisdiction of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the Federal Financial Institutions Regulatory Agencies (FFIRAs)) are subject to applicable FFIRA regulations regarding the BSA, which also require compliance with the CIP regulation at 31 CFR 1020.220, which was jointly promulgated by FinCEN and the FFIRAs. *See, e.g.,* 12 CFR 21.21(c)(2) (OCC); 12 CFR 208.63(b)(2) (Federal Reserve), 12 CFR 326.8(b)(2) (FDIC), 12 CFR 748.2(b)(2) (NCUA); *see also* 12 CFR 5.34(e)(3) and 5.38(e)(3) (OCC regulations regarding operating subsidiaries of national banks and Federal savings associations). Investment advisers that are banks (or bank subsidiaries) are therefore already subject to CIP requirements in their capacities as banks (or bank subsidiaries) pursuant to 31 CFR 1020.220, which applies to banks. Under the proposed rule, RIAs that are dual registrants or affiliated advisers would not be legally required to establish a separate CIP for their advisory activities, provided that an existing comprehensive CIP-compliant AML/CFT program covers all the entity's legal and regulatory obligations under the proposed rule.

[16] *See infra* section C.1. of the Economic Analysis for additional information on when investment advisers may implement CIP measures; *see also* 89 FR at 12112 (discussing circumstances where some investment advisers implement AML/CFT measures).

[17] The rule that applies to those investment companies falling within the category of ''open-end company'' contained in section 5(a)(1) of the Investment Company Act of 1940 (codified at 15 U.S.C. 80a–1 *et seq.*) that are registered or required to register under section 8 of that Act defined such investment companies as ''mutual funds.'' *See* FinCEN and SEC, Customer Identification Programs for Mutual Funds, 68 FR 25131, 25147 (May 9, 2003); *see also* 31 CFR 1010.100(gg).

[18] *See, e.g.,* 31 CFR 1020.220, 1023.220, 1024.220, 1026.220.

[19] This NPRM has definitions included at proposed § 1032.100 that are not included in the AML/CFT Program and SAR Proposed Rule version of proposed § 1032.100. *Cf.* 89 FR 12108. If both of these rules are adopted as proposed, FinCEN and the SEC anticipate that this NPRM's § 1032.100 would become part of § 1032.100.

[20] *See* 15 U.S.C. 80b–2(a)(11) (defining ''investment adviser'' as a person engaged in the business of certain activities). FinCEN regulations define ''person'' as ''an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act) and all entities cognizable as legal personalities.'' 31 CFR 1010.100(mm).

[21] Section 326 of the USA PATRIOT Act provides that the regulations prescribed thereunder shall require financial institutions to implement reasonable procedures for ''verifying the identity of any person seeking to *open* an account.'' 31 U.S.C. 5318(*l*)(2) (emphasis added). If an investment adviser acquires an account from another financial institution, the customer is not opening an account with the investment adviser.

[22] Such accounts are not exempted from applicable AML/CFT program rules or other laws or regulations that may be applicable. Investment advisers may need to implement reasonable procedures to detect money laundering in any account, however acquired, if they are already subject to an AML/CFT program requirement, such as in the case of a dual registrant. *See infra* section IV.C.1. below. As part of the proposed AML compliance program requirement for investment advisers, an investment adviser generally should consider whether it needs to take additional steps to verify the identity of customers, based on its assessment of the relevant risks, as well as to comply with other applicable AML/CFT program requirements. *See, e.g.,* AML/CFT Program and SAR Proposed Rule.

[23] *See* 31 CFR 1024.100(a)(2)(ii).

person identified as the accountholder, except in the case of an individual who lacks legal capacity, such as a minor, and non-legal entities, in which case the customer would be the individual who opens the new account for a minor or non-legal entity. Under this proposed rule, an investment adviser would not be required to look through a trust or similar account to its beneficiaries and would only be required to verify the identity of the named accountholder.[24]

The proposed rule's definition of ''customer'' would not include individuals with authority or control over the accounts, if such persons are not the accountholders. In addition, the definition would not include persons who fill out the account opening paperwork or provide information necessary to set up an account but are not the accountholder. Instead, as described below, section 1032.220(a)(2)(ii)(C) of the proposed rule separately would require an investment adviser's CIP to address situations where, based on the investment adviser's risk assessment of a new account opened by a customer that is not an individual, the investment adviser will need to obtain information about individuals with authority or control over the account in order to verify the customer's identity.

The proposed definition of ''customer'' would also not include a financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator; certain government entities; certain persons (other than banks) that are publicly listed on U.S. securities exchanges or certain subsidiaries of persons listed on U.S. securities exchanges;[25] or persons that have an existing account with the investment adviser, provided the investment adviser has a reasonable belief that it knows the true identity of the person. These exemptions are being included to be consistent with CIP requirements for other financial institutions.[26]

Section 1032.100(d) Financial institution. The proposed rule includes a definition of ''financial institution'' that cross-references the BSA's definition of ''financial institution'' in 31 U.S.C. 5312(a)(2) and (c)(1), and its implementing regulations, which is currently codified at 31 CFR 1010.100(t).[27] The proposed rule includes this definition to avoid any ambiguity about the meaning of ''financial institution'' in proposed § 1032.220(a)(6). Proposed § 1032.220(a)(6) would allow investment advisers to rely on certain other financial institutions' performance of their CIP procedures under specific circumstances, as described below. Accordingly, and as described below, an investment adviser would be able to rely on such performance by other ''financial institutions'' as defined in 31 U.S.C. 5312(a)(2) and (c)(1) and its implementing regulations to fulfill those aspects of its CIP obligations.

Section 1032.100(e) Investment adviser. The proposed rule includes a definition of ''investment adviser'' that is the same as the proposed definition of investment adviser in the AML/CFT Program and SAR Proposed Rule.[28] In this way, both this proposed rule and the AML/CFT Program and SAR Proposed Rule would apply to the same group of persons. The proposed definition in the AML/CFT Program and SAR Proposed Rule—and thus the definition proposed in this NPRM—is ''[a]ny person who is registered or required to register with the SEC under section 203 of the Advisers Act (15 U.S.C. 80b–3(a)), or any person that is exempt from SEC registration under section 203(l) or 203(m) of the Advisers Act (15 U.S.C. 80b–3(l), (m)).''[29] In other words, under this proposed definition, an investment adviser would be any RIA (those registered or required to register with the SEC) or ERA (those exempt from SEC registration under the listed provisions).[30] We anticipate that any change to the scope of the AML/CFT Program and SAR Proposed Rule, as finalized, would also be reflected in this rule, to ensure that the scope of both rules remain consistent.

B. Customer Identification Program: Minimum Requirements

Section 1032.220(a)(1) In general. Section 326 requires the Secretary and, where relevant, the appropriate Federal functional regulator (here, the SEC) to prescribe regulations requiring financial institutions to implement, and customers (after being given adequate notice) to comply with, ''reasonable procedures'' for verifying the identity of any person seeking to open an account, ''to the extent reasonable and practicable'';[31] for maintaining records associated with such verification; and for consulting lists of known terrorists and terrorist organizations.[32] Proposed § 1032.220(a)(1) accordingly would require that each investment adviser establish, document, and maintain a written CIP as part of the AML/CFT program under 31 U.S.C. 5318(h).[33] This proposed requirement is intended to make clear that the CIP is not a separate program, but rather would be incorporated into an investment adviser's overall AML/CFT program. The proposed rule would require that the CIP be appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (a)(5) of proposed section 1032.220.

The investment adviser may deem these requirements satisfied for any mutual fund it advises if the mutual fund has developed and implemented a CIP that is compliant with CIP requirements applicable to mutual funds under the relevant provision of this subpart. FinCEN and the SEC believe that this exemption is appropriate because of the regulatory and practical relationship between

[24] However, based on an investment adviser's risk assessment of a new account opened by a customer that is not an individual, an investment adviser may need to take additional steps to verify the identity of the customer by seeking information about individuals with authority or control over the account in order to identify the customer pursuant to section 1032.220(a)(2)(ii)(C) of the proposed rule, or may need to look through the account in connection with the customer due diligence procedures described in the proposed AML/CFT Program and SAR Proposed Rule.

[25] Such a person that is a financial institution, other than a bank, would be exempt under the proposed definition only to the extent of its domestic operations. *See* 31 CFR 1020.315(b)(4).

[26] *See, e.g.,* 31 CFR 1023.100(d)(2) (broker-dealers) and 1024.100(c)(2) (mutual funds).

[27] *See* section I.A, *supra,* discussing the BSA's definition of ''financial institution.'' While the BSA expressly defines various entities as ''financial institutions,'' it also provides Treasury with the authority to designate additional entities as financial institutions in its regulations. Specifically, the BSA authorizes Treasury to define additional types of businesses as financial institutions if Treasury determines that such businesses engage in any activity ''similar to, related to, or a substitute for'' activities in which any of the enumerated financial institutions are authorized to engage. *See* 31 U.S.C. 5312(a)(2)(Y). In the AML/CFT Program and SAR Proposed Rule, FinCEN is proposing to make such a determination with respect to the defined set of investment advisers, and thereby add these investment advisers to § 1010.100(t)'s definition of financial institution. *See* 89 FR at 12118.

[28] *See* 89 FR at 12118.

[29] *Id. See also* 17 CFR 275.203(l)–1; 17 CFR 275.203(m)–1.

[30] The proposed definition of ''investment adviser'' would include both primary advisers and sub-advisers. The Advisers Act does not distinguish between advisers and sub-advisers; all are investment advisers.

[31] Treasury and the SEC are mindful of the legislative history of section 326 for verification procedures. *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001). (''It is the Committee's intent that the verification procedures prescribed by Treasury make use of information currently obtained by most financial institutions in the account opening process. It is not the Committee's intent for the regulations to require verification procedures that are prohibitively expensive or impractical.'').

[32] 31 U.S.C. 5318(*l*)(2).

[33] As discussed above, investment advisers are not yet required to have an AML/CFT program because this requirement has been proposed in an ongoing rulemaking.

mutual funds and their investment advisers. As a practical matter, we believe that any CIP requirement imposed on an RIA to a mutual fund is already addressed by the existing CIP requirements imposed on the mutual fund itself.[34] Consequently, we are proposing not to require investment advisers to mutual funds to include those mutual funds within the investment advisers' own CIP programs, as doing so would be redundant. This exemption is permissive and not mandatory; an investment adviser could decide to include the mutual funds it advises in complying with the investment adviser's CIP requirements.

Section 1032.220(a)(2) Identity verification procedures. Proposed § 1032.220(a)(2) would require that an investment adviser's CIP include risk-based procedures for verifying the identity of customers, to the extent reasonable and practicable, and that such verification occur within a reasonable time before or after the customer's account is opened. The inclusion of ''before or after'' account opening is intended to offer flexibility to an adviser in complying with the requirements of the proposed rule during the process of creating an advisory relationship with a customer. The procedures must enable the investment adviser to form a reasonable belief that it knows the identity of each customer.

A person becomes a customer each time the person opens a new account with an investment adviser. Therefore, upon the opening of each account, the verification requirements of this proposed rule would apply. However, if a customer whose identification has been verified previously opens a new account, the investment adviser would generally not need to verify the customer's identity again, provided the investment adviser (1) previously verified the customer's identity, to the extent required, in accordance with procedures consistent with the proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer based on the previous verification.

Under this proposed rule, the procedures must be based on the investment adviser's assessment of the relevant risks, including those presented by the various types of accounts maintained by the investment adviser; the various methods of opening accounts provided by the investment adviser, the various types of identifying information available and the investment adviser's size, location, and customer base. Other relevant risk factors could include, for example, the types of money laundering and terrorist financing activities present in the respective jurisdiction; whether account opening occurs in-person or online; the types of services and transactions offered or performed by the investment adviser; and the reliance on third-party firms (including other investment advisers, broker-dealers, or funds) for identity verification procedures.

Thus, in developing and updating CIPs, investment advisers would be required to consider the type of identifying information available for customers and the methods available to verify that information. While paragraph (a)(2)(i) of this proposed rule would require certain minimum identifying information to be obtained, and paragraph (a)(2)(ii) discusses certain suitable verification methods, as described below, investment advisers should consider on an ongoing basis whether other identifying information or verification methods are appropriate, particularly as they become available in the future.

Section 1032.220(a)(2)(i) Customer information required. Pursuant to the proposed rule, an investment adviser's CIP must require the investment adviser to obtain, at a minimum, certain identifying information with respect to each customer before or after an account is opened for the customer. Specifically, the investment adviser must obtain with respect to each customer: (1) name; (2) date of birth for an individual or the date of formation for any person other than an individual; (3) address;[35] and (4) identification number.[36] Under proposed § 1032.220(a)(2)(i), the term ''name'' would refer to a customer's full legal name, and the investment adviser should consider collecting any aliases or assumed names as well (*e.g.,* ''doing business as'' or ''DBA'' names). For persons other than an individual, the date of formation may be available on the certificate of formation or incorporation (or other document used to create a legal person), as well as any amendments to those documents.

Proposed § 1032.220(a)(2)(i)(A) would require only that this minimum identifying information be obtained. Investment advisers, in assessing the risk factors in paragraph (a)(2), however, would also be required to determine whether other identifying information is necessary to enable the investment adviser to form a reasonable belief that it knows the true identity of each customer. There also may be other circumstances that make it appropriate to obtain additional information.[37] For example, under proposed section 1032.220(a)(2)(ii)(C), an investment adviser must set forth guidelines in its CIP for situations where, based upon a risk-based assessment of a customer that is not an individual, additional information should be obtained about the individuals with authority or control over the customer's account. The CIP generally should include guidelines for collecting additional information in other situations where the investment adviser determines in the course of examining the nature of its business and operations that additional information should be obtained, consistent with a risk-based CIP, in order to enable the investment adviser to form a reasonable belief that it knows the true identity of the customer. Such guidelines generally should indicate the types of additional information needed and the circumstances when it would be obtained.

Proposed § 1032.220(a)(2)(i)(B) includes an exception from the requirement to obtain a taxpayer identification number from a customer

[34] *See* 31 CFR 1024.220 (mutual fund CIP requirement); see also 89 FR at 12123–4 (explaining the relationship between mutual funds and investment advisers for purposes of AML/CFT compliance).

[35] For an individual who does not have a residential or business street address, the proposed rule would require the adviser to collect an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual. *See* proposed section 1032(a)(2)(i)(A)(*3*)(*ii*). For individuals who live in rural areas who do not have a residential or business address, an APO or FPO, or the residential or business address of next of kin or another contact individual, an investment adviser may obtain a rural route number. A rural route number, unlike a post office box number, is a description of the approximate area where the customer can be located. In the absence of such a number, and in the absence of a residential or business address for next of kin or another contact individual, an APO, and an FPO, a description of the customer's physical location would suffice.

[36] Proposed section 1032(a)(2)(i)(4) would require that the identification number be, for a U.S. person, a taxpayer identification number (TIN), which could be a social security number for an individual. For a non-U.S. person, the identification number would be one or more of the following: a TIN; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. For a non-U.S. person that is not an individual and that does not have an identification number, the investment adviser must request alternative government-issued documentation certifying the existence of the person. As proposed, the CIP may also include procedures for opening an account for a person that has applied for, but has not received, a TIN.

[37] For example, it may be appropriate for an investment adviser to seek to obtain additional information about a customer that is a recently formed entity, given that this type of customer may pose a higher AML/CFT risk than established entities that may have longer-standing business dealings and that may be publicly known.

opening a new account. As proposed, this exception would allow an investment adviser to open an account for a person that has applied for, but has not received, a TIN. In this case, the CIP would be required to include procedures to confirm that the application was filed before the person opened the account and to obtain the TIN within a reasonable period of time after the account is opened.

Moreover, under proposed § 1032.220(a)(2)(i), when opening an account for a non-U.S. person that is not an individual and that does not have an identification number, the investment adviser would be required to request alternative government-issued documentation certifying the existence of the customer. In contrast to the CIP requirements for mutual funds and broker dealers regarding a non-U.S. person that is not an individual, this specific requirement is being included here to account for changes in how financial institutions now routinely verify the identity of non-U.S. persons that are not individuals.

Section 1032.220(a)(2)(ii) Customer verification. Under proposed § 1032.220(a)(2)(ii), after obtaining identifying information with respect to a customer, the investment adviser would be required to follow risk-based procedures to verify the accuracy of that information in order to reach a point where it can form a reasonable belief that it knows the true identity of the customer. The proposed rule would require that verification procedures be undertaken within a reasonable time before or after a customer's account is opened. This flexibility would have to be exercised in a reasonable time, given that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money or engage in other relevant illicit finance activity while verification is pending. The amount of time it will take an investment adviser to verify the identity of a customer may depend on the type of account opened, whether the customer opens the account in person, and the type of identifying information available. For example, an investment adviser may choose to place limits on the account, such as temporarily limiting advisory-related activities in an account until the customer's identity is verified in which case the adviser should inform the accountholder. Therefore, the proposed rule would provide investment advisers with the flexibility to use a risk-based approach to determine when the identity of a customer must be verified relative to the opening of an account.

Proposed § 1032.220(a)(2)(ii) would provide for two methods of verifying identifying information: verification through documents and verification through non-documentary means. This proposed provision would require that an investment adviser's CIP address both methods of verification. The CIP would have to set forth risk-based procedures describing when documents, non-documentary methods, or a combination of both will be used. These procedures should be based on the investment adviser's assessment of the factors described in paragraph (a)(2) of the proposed rule.

The risk that an investment adviser will not have a reasonable belief that it knows a customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created, or conducts substantial business, in jurisdictions designated as primary money laundering concerns or designated as non-cooperative by an international body, or jurisdictions that are otherwise considered high-risk for money laundering or terrorist financing with respect to their compliance with relevant international standards.[38] Obtaining sufficient information to verify a given customer's identity can reduce the risk an investment adviser will be used as a conduit for money laundering and terrorist financing. An investment adviser's identity verification procedures must be based on its assessments of the factors in paragraph (a)(2). Accordingly, when those assessments suggest a heightened risk, the investment adviser should modify its verification measures accordingly (*e.g.,* by utilizing additional measures).

Section 1032.220(a)(2)(ii)(A) Customer verification through documents. Proposed § 1032.220(a)(2)(ii)(A) would require an investment adviser's CIP to contain procedures that set forth the documents that the investment adviser will use for verification, based on a risk-based analysis of the types of documents that it believes will enable it to verify customer identities. The proposed rule includes a list of identification documents, though an investment adviser would be allowed to use other documents, provided they allow the investment adviser to establish a reasonable belief that it knows the true identity of the customer. For individuals, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For other persons, suitable documents would include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument. The investment adviser's procedures must take into account circumstances in which there may be problems authenticating documents and the inherent limitations of certain documents as a means of identity verification.[39] These limitations would affect the types of documents that would be necessary to establish a reasonable belief that the investment adviser knows the true identity of the customer and would require the use of non-documentary methods in addition to documents under some circumstances.

Under proposed § 1032.220(a)(2)(ii)(A), once an investment adviser obtains and verifies the identity of a customer through a suitable document, the investment adviser would not be required to take steps to determine whether a document has been validly issued. An investment adviser generally would be allowed to rely on an unexpired government-issued identification for verification purposes;[40] however, if a document has indicators of fraud, the investment adviser would have to consider that

[38] For example, the Financial Action Task Force (FATF), an intergovernmental body that establishes international standards for anti-money laundering, countering the financing of terrorism, and countering the financing of proliferation of weapons of mass destruction, issues lists of jurisdictions with strategic AML/CFT deficiencies, including identifying certain jurisdictions as high risk. FinCEN issues a press release following each FATF update to the lists and reminds U.S. financial institutions to apply enhanced due diligence proportionate to the risks for those identified as high-risk jurisdictions. *See, e.g.,* Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism and Counter-Proliferation Deficiencies (Feb. 29, 2024), *available at https://www.fincen.gov/news/news-releases/financial-action-task-force-identifies-jurisdictions-anti-money-laundering.*

[39] Proposed 1032.220(a)(2)(ii)(B) notes examples of potential circumstances in which an investment adviser may encounter problems or limitations involving customer verification through documents, including circumstances in which the investment adviser is not familiar with the documents presented, among other potential circumstances.

[40] Proposed 1032.220(a)(2)(ii)(A) notes that, for verification procedures relying on documents, documents may include: for an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and, for a person other than an individual (such as a corporation, partnership, or trust), documents and any amendments thereto showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

factor in determining whether it could form a reasonable belief that it knows the customer's true identity.[41]

Section 1032.220(a)(2)(ii)(B) Customer verification through non-documentary methods. Proposed § 1032.220(a)(2)(ii)(B) would require an investment adviser's CIP to describe non-documentary verification methods and when such methods will be employed in addition to, or instead of, verification through documents. The proposed rule would permit the exclusive use of non-documentary methods because some accounts may be opened by telephone, mail, or over the internet in ways that may make sole reliance on documentary verification difficult or burdensome.[42] However, even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well. Under this provision, the investment adviser would be ultimately responsible for employing verification methods that enable the adviser to form a reasonable belief that it knows the true identity of the customer.

Proposed § 1032.220(a)(2)(ii)(B) would set forth certain non-documentary methods that would be suitable for verifying identity. These methods may include contacting a customer; obtaining a financial statement; comparing the identifying information obtained with respect to the customer against relevant fraud, bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior; comparing the identifying information with information available from a trusted third-party source, such as a credit report from a consumer reporting agency or an account verification database; and checking references with other financial institutions. This list is not intended to exhaust all methods that may be suitable, however. For example, the investment adviser also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

Proposed § 1032.220(a)(2)(ii)(B) also would require an investment adviser's CIP to address situations in which (1) an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the investment adviser is not familiar with the types of documents presented; (3) the investment adviser does not obtain documents to verify the identity of the customer; (4) the investment adviser does not meet face-to-face with a customer who is a natural person; and (5) the investment adviser is otherwise presented with circumstances that increase the risk the investment adviser will be unable to form a reasonable belief that it knows the true identity of a customer through documents.

FinCEN and the SEC recognize that identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity theft, investment advisers would be encouraged to use non-documentary methods as well, even when an investment adviser has received identification documents from the customer. Additionally, investment advisers are encouraged to consider using both documentary and non-documentary verification methods and should consider on a regular basis whether their procedures for identity verification are appropriate.

Section 1032.220(a)(2)(ii)(C) Additional verification for certain customers. Proposed § 1032.220(a)(2)(ii)(C) would require that an investment adviser's CIP address circumstances in which, based on the investment adviser's risk assessment of a new account opened by a customer that is not an individual, the investment adviser will obtain information about individuals with authority or control over such accounts in order to verify the customer's identity. This requirement would apply only when the investment adviser cannot verify the true identity of a customer that is not an individual using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of the proposed rule.[43]

While investment advisers may be able to verify the majority of customers adequately through the documentary or non-documentary verification methods described above, there may be circumstances when the investment adviser cannot form a reasonable belief that it knows the true identity of a customer using such methods. The risk that the investment adviser will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or by an international body as non-cooperative, or jurisdictions that are otherwise considered high-risk for money laundering or terrorist financing with respect to their compliance with relevant international standards. As a result of this, FinCEN and the SEC are proposing to require (1) that an investment adviser identify customers that are not individuals that pose a heightened risk of not being properly identified and (2) that an investment adviser's CIP prescribe additional measures that may be used to obtain information about individuals with authority or control over the account to verify the customer's identity when standard documentary or non-documentary methods prove to be insufficient.

Section 1032.220(a)(2)(iii) Lack of verification. Proposed § 1032.220(a)(2)(iii) would require that an investment adviser's CIP include procedures for responding to circumstances in which the investment adviser cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe (1) when the investment adviser should not open an account, (2) the terms under which the investment adviser may provide advisory services to the customer while the investment adviser attempts to verify the customer's identity, (3) when the investment adviser should close an account after attempts to verify a customer's identity fail, and (4) when the investment adviser should file a SAR in accordance with applicable law and regulation.[44]

Section 1032.220(a)(3) Recordkeeping. Proposed § 1032.220(a)(3) would require that an investment adviser's CIP include procedures for making and maintaining a record of information obtained under procedures implementing proposed paragraph (a), as discussed in greater detail in the following paragraphs. This

[41] If the investment adviser has a broader AML/CFT program, the presentation by a customer of a document showing indications of fraud should generally also be considered by the investment adviser as part of its broader AML/CFT program.

[42] FinCEN and the SEC recognize that account opening by solely telephone, mail, or over the internet is unlikely in the context of customers that are private funds.

[43] An investment adviser need not undertake any additional verification methods with respect to a potential customer in this circumstance if it chooses not to permit the potential customer to open an account. However, the adviser may decide to collect such information if it were to file a SAR regarding the potential customer.

[44] Although investment advisers are not currently required to file SARs, they are encouraged to do so voluntarily. As noted at n.7, *supra,* on Feb. 15, 2024, Treasury issued the AML/CFT Program and SAR Proposed Rule, which, if adopted, would require investment advisers to file SARs in certain circumstances.

proposal is consistent with the requirement of 31 U.S.C. 5318(l)(2)(B) that CIPs include procedures for maintaining records of the information used to verify a person's identity, including name, address, and other identifying information.

Section 1032.220(a)(3)(i) Required records. Proposed § 1032.220(a)(3)(i) would require that an investment adviser's CIP include procedures for making and maintaining records related to verifying customer identity, as well as procedures for how to do so. Records would have to include the identifying information about each customer under proposed (a)(2)(i) and a description of any document that the investment adviser relied on to verify the identity of the customer (noting the document type, any identification number contained therein, the place of issuance, and the date of issuance and expiration as applicable and relevant) under proposed (a)(3)(i)(B). Proposed § 1032.220(a)(3)(i)(C) would require records to include a description of the methods and results of any measures undertaken to verify the identity of the customer. This description would include any relevant non-documentary methods and additional verification for certain customers used to verify identity under proposed § 1032.220(a)(2)(ii)(B) and (C). Finally, proposed § 1032.220(a)(3)(i)(D) would require investment advisers to record a description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

An investment adviser would be allowed to use electronic records to satisfy the requirements of this proposed rule.

Section 1032.220(a)(3)(ii) Record retention. Proposed § 1032.200(a)(3)(ii) would prescribe a bifurcated record retention schedule that is consistent with a general five-year retention requirement. Under this proposed provision, an investment adviser would be required to retain the information obtained about a customer pursuant to proposed paragraph (a)(3)(i)(A) (*i.e.,* identifying information about the customer) while the account remains open and for five years after the date the account is closed.[45] The remaining records required under proposed paragraphs (a)(3)(i)(B), (C), and (D) (*i.e.,* information regarding the verification of a customer's identity), however, would only have to be retained for five years after the record is made.

Section 1032.220(a)(4) Comparison with Government Lists. Under 31 U.S.C. 5318(l)(2)(C), a CIP must include reasonable procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations provided by any government agency. Proposed § 1032.220(a)(4) accordingly would require that an investment adviser's CIP include reasonable procedures for determining whether a customer appears on any such list provided by any Federal Government agency that is designated as such by Treasury in consultation with the Federal functional regulators, and that an investment adviser make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law, regulation, or directive issued in connection with the applicable list. This requirement would apply only with respect to lists circulated, directly provided, or otherwise made available by the Federal government and designated as such by Treasury in consultation with the Federal functional regulators. In addition, proposed § 1032.220(a)(4) would state that the procedures must require investment advisers to follow all Federal directives issued in connection with such lists. Because Treasury and the Federal functional regulators have not yet designated any such lists for the purposes of CIP, the proposed rule cannot be more specific with respect to the lists that investment advisers must check. However, investment advisers would not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, investment advisers would receive separate notification regarding the lists that they must consult for purposes of this provision.

Many investment advisers already have procedures for determining whether customers' names appear on some federal government lists, including lists that identify known terrorists and terrorist organizations. For example, under current law, there are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Assets Control (''OFAC''). Failure to comply with these requirements may result in criminal or civil penalties.

Section 1032.220(a)(5) Customer Notice. Section 5318(l)(2) also provides that financial institutions must give their customers adequate notice of their identity verification procedures. Therefore, proposed § 1032.220(a)(5) would require that an investment adviser's CIP include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities. The proposed rule would state that this notice is adequate if the investment adviser generally describes the identification requirements of the proposed rule and provides such notice in a manner reasonably designed to ensure that a prospective customer is able to view the notice, or is otherwise given notice, before opening an account. Under proposed § 1032.220(a)(5), depending on how an account is opened, an investment adviser could post a notice on its website, include the notice in its account applications, or use any other form of written or oral notice.[46] The sample notice included in the proposed rule, if appropriate, would be deemed adequate notice to an investment adviser's customers when provided in accordance with the other requirements described in this section.

Section 1032.220(a)(6) Reliance on another financial institution. There may be circumstances in which an investment adviser could rely on the performance by another financial institution of some or all of the elements of the investment adviser's CIP. However, the investment adviser would remain responsible for ensuring compliance with the proposed rule 1032.220(a)(6), and therefore would be required to actively monitor the operation of its CIP and assess its effectiveness. Proposed § 1032.220(a)(6) would provide that an investment adviser's CIP may include procedures that specify when the investment adviser will rely on the performance by another financial institution (including an affiliate) of any procedures of the investment adviser's CIP, and thereby satisfy the investment adviser's obligations under the proposed rule. Under proposed § 1032.220(a)(6), reliance would be permitted if a customer of the investment adviser is opening an account or has opened or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that: (1)

[45] The proposed five-year period is generally consistent with the retention period under the Advisers Act books and records rule, which generally requires most books and records to be retained for five years from the last day of the fiscal year in which the last entry was made on the document or the document was disseminated. *See* Advisers Act Rule 204–2 codified at 17 CFR 275.204–2. Advisers may be required to keep certain records for longer periods under the books and records rule.

[46] For example, if an account is opened electronically, such as through an internet website, the investment adviser may provide notice electronically.

such reliance is reasonable under the circumstances, (2) the other financial institution is subject to a rule implementing the AML/CFT compliance program requirements of 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator, and (3) the other financial institution enters into a contract with the investment adviser requiring it to certify annually to the investment adviser that it has implemented an AML/CFT program and will perform (or its agent will perform) the specified requirements of the investment adviser's CIP. This last element could be satisfied by a reliance letter or other similar documentation. The investment adviser would not be held responsible for the failure of the other financial institution to fulfill adequately the adviser's CIP responsibilities, provided that the investment adviser can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. The SEC and FinCEN emphasize that the investment adviser and the other financial institution upon which it relies would have to satisfy all of the conditions set forth in this proposed rule. If they do not, then the investment adviser would remain solely responsible for applying its own CIP to each customer in accordance with this rule.[47]

Section 1032.220(b) Exemptions. Proposed § 1032.220(b) would provide that the SEC, with the concurrence of the Secretary, may by order or regulation exempt any investment adviser or any type of account from the requirements of this section. Proposed § 1032.220(b) would also provide that the Secretary, with the concurrence of the Commission, may exempt any investment adviser or any type of account from the requirements of this section. In issuing such exemptions, the SEC and the Secretary would have to consider whether the exemption is consistent with the purposes of the BSA and in the public interest, and they may consider other necessary and appropriate factors.

Section 1032.220(c) Effective Date. FinCEN and SEC anticipate that the effective date of the proposed rule will be 60 days after the date on which the final rule is published in the **Federal Register**. In order to provide time for investment advisers to come into compliance, section 1032.220(c) states the compliance date by which an investment adviser would be required to comply with this section. Specifically, under this proposed rule, an investment adviser would be required to develop and implement a CIP that complies with the requirements of this section on or before six months from the effective date of the regulation, but no sooner than the compliance date of the AML/CFT Program and SAR Proposed Rule, if adopted. We believe that six months strikes an appropriate balance between providing advisers with sufficient time to develop and implement a CIP while not overly delaying CIP implementation across the investment adviser industry.

Section 1032.220(d) Other requirements unaffected. The proposed rule would include a provision, proposed § 1032.220(d), parallel to that in CIP rules previously adopted for other financial institutions, stating that nothing in the rule shall be construed to relieve an investment adviser of its obligations to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.[48]

III. Request for Comments

FinCEN and the SEC invite comment on all aspects of the proposed regulation, and specifically seek comment on the following issues:

1. Whether the proposed definition of ''account'' is appropriate and unambiguous, and whether other examples of accounts should be added to the rule text.

a. Should an account opened for the purpose of participating in an employee benefit plan established under ERISA be excluded from the CIP account definition?

b. Are there types of accounts that should be exempted from CIP obligations?

2. The proposed definition of ''account'' would exclude an account that an investment adviser acquires through an acquisition, merger, purchase of assets, or assumption of liabilities, given that customers do not ''open'' transferred accounts, and, therefore, the accounts do not fall within the scope of section 326. As discussed above, advisers may be required to apply other sanctions and export compliance and AML/CFT requirements to those accounts. Are there circumstances in which advisers should be required to fulfill identity verification requirements for some transfers?

a. Should the rule require advisers to re-verify a customer's identity after a certain period of time (*e.g.,* every year, every other year, or every five years)?

3. Should the definition of ''account'' refer to the activities enumerated in 15 U.S.C. 80b–2(a)(11) for the definition of investment adviser? Or is the reference to ''investment advisory services'' sufficient?

4. Is the proposed definition of ''customer'' appropriate? Should other examples of customers be added to the rule text?

5. Should the definition of investment adviser apply to non-U.S. advisers registered or required to register with the SEC (for RIAs) or that report to the SEC on Form ADV (for ERAs), as proposed? What would be the logistical challenges of this approach?

6. Should terms defined elsewhere within 31 CFR chapter X, such as ''U.S. Person'', ''Non-U.S. Person'', and ''Taxpayer Identification Number'' be defined in the proposed rule as well or are those terms well-understood for CIP purposes?

7. To what extent do RIAs and ERAs already require customer identification and verification or otherwise have procedures in the manner proposed in the course of regular business or under other, existing regulatory obligations?

a. To what extent do the customer identification and verification procedures currently implemented by RIAs and ERAs resemble or differ from those required by the proposed rule?

8. Are there other categories of entities that, like mutual funds, should be exempted from an investment adviser's CIP program. Why or why not?

9. Should the exemption for mutual funds be dependent on the nature of the relationship between the investment adviser and its mutual fund customer and the ability of the investment adviser to meet CIP obligations?

[47] Pursuant to a Securities Industry and Financial Markets Association (SIFMA) no-action letter, staff of the SEC's Division of Trading and Markets stated that it would not recommend enforcement action if a broker-dealer relies on an RIA to perform some or all aspects of the broker-dealer's CIP obligations or the portion of customer due diligence requirements regarding beneficial ownership requirements for legal entity customers, provided that certain conditions are met, including that the RIA implements its own AML/CFT Program. Letter to Mr. Bernard V. Canepa, Associate General Counsel, SIFMA, Request for No-Action Relief Under Broker-Dealer Customer Identification Program Rule (31 CFR 1023.220) and Beneficial Ownership Requirements for Legal Entity Customers (31 CFR 1010.230) (Dec. 9, 2022), *available at https://www.sec.gov/files/nal-sifma-120922.pdf* (SIFMA No-Action Letter). This no-action letter was originally issued in 2004 and has been periodically reissued and remains effective. Any SEC staff statements cited represent the views of the SEC staff. They are not a rule, regulation, or statement of the SEC. Furthermore, the SEC has neither approved nor disapproved their content. These SEC staff statements, like all SEC staff statements, have no legal force or effect: they do not alter or amend applicable law; and they create no new or additional obligations for any person.

[48] *See, e.g.,* 31 CFR 1020.220(c), 1023.220, 1024.220, 1026.220.

10. Should closed-end registered funds, wrap fee programs, or other types of accounts advised by investment advisers be, on a risk-basis, exempted from an investment adviser's CIP program?

11. FinCEN also requests comment on the money laundering, terrorist financing, and other illicit finance risks faced by closed-end funds, and how entities with existing CIP requirements, such as banks and broker-dealers, apply those requirements to activity involving closed-end funds.

12. How would an investment adviser apply the identification and verification requirements at proposed § 1032.220(a)(2) to a private fund customer? What type of information would the adviser use to ask identification questions? We expect that advisers would likely already have this information in respect of private funds that they manage. Do commenters agree?

13. Proposed § 1032.220(a)(2) would require that an investment adviser verify customer identity within a reasonable time before or after the customer's account is opened. To what extent would an investment adviser provide advisory services prior to verifying customer identity? How much time would an investment adviser reasonably need to verify customer identity (*e.g.,* 30 days)?

14. How do investment advisers currently collect identity information for non-U.S. customers that are not individuals, such as foreign legal entities or other legal persons and legal arrangements?

15. Are the provisions in section 1032.220(a)(6) sufficient to permit an adviser to rely on another financial institution to perform its CIP requirements? Would there be any challenges for advisers with the proposed approach? Do commenters agree that an investment adviser should be required to actively monitor the operation of its CIP and assess its effectiveness in order to rely on another financial institution, or should the adviser not be held responsible by showing it reasonably relied on another financial institution that satisfied all of the conditions set forth in this proposed rule?

16. Is the proposed requirement for the other financial institution to enter into a contract with the investment adviser feasible? Does it depend on the size of the investment adviser and its negotiating power? Should we modify this requirement? For example, should we remove or modify the requirement for the other financial institution to certify that it will perform specified requirements of the investment adviser's CIP?

17. Does the proposed compliance date (six months after the final rule is issued) give advisers sufficient time to comply with the requirements of the proposed rule? Should the compliance date be staggered based on adviser size?

18. If an investment adviser cannot form a reasonable belief that it knows the true identity of a customer, should the investment adviser be able to engage in advisory activities on behalf of the customer prior to verifying the customer's identity?

IV. Analysis of the Costs and Benefits Associated With the Proposed Rule

A. Introduction

FinCEN[49] and the SEC are sensitive to the economic effects that could result from the proposed rule and have accordingly considered certain likely effects and reasonable alternatives. Section 326 of the USA PATRIOT Act requires Treasury to prescribe regulations setting forth minimum standards for financial institutions regarding the identities of customers when they open an account. It also provides that the regulations issued by Treasury and the SEC must, at a minimum, require financial institutions to implement reasonable procedures for: (1) verification of the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintenance of the information used to verify the person's identity, including name, address, and other identifying information; and (3) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.[50]

Under the BSA, FinCEN recently published the AML/CFT Program and SAR Proposed Rule, which would include certain investment advisers in the definition of financial institutions.[51] If that rule is adopted and ''investment adviser'' is thereby added to FinCEN's definition of ''financial institution'' at 31 CFR 1010.100(t), covered investment advisers would be financial institutions for purposes of section 326. As a consequence, FinCEN and the SEC would be required to jointly prescribe rules that establish minimum standards for covered investment advisers regarding the identities of customers when they open an account, which are proposed in this release.[52] This proposed rule is designed to align the requirements for investment advisers with existing rules for other financial institutions, such as broker-dealers, mutual funds, credit unions, banks, and others, to adopt and implement CIPs.

B. Broad Economic Considerations

Evaluating the effectiveness of AML/CFT regimes is difficult because there is no precise method to determine either the actual number or magnitude of money laundering and terrorism financing crimes that occur, since some of these crimes go undetected. In addition, it is impossible to infer either the number or magnitude of such crimes that would have occurred absent the regime or under some alternative enforcement regime. To our knowledge, there are no academic studies that specifically assess the efficacy of CIP provisions as a part of AML/CFT regimes. However, there is some empirical evidence that points toward the effectiveness of the U.S. AML/CFT regime more broadly.[53]

The scale of money laundering in the United States is large. Specifically, in fiscal year 2022, offenders in 1,001 money laundering cases were sentenced

[49] When proposing a rule, FinCEN must conduct a regulatory impact analysis in accordance with Executive Orders 12866, 13563, and 14094 (E.O. 12866 and its amendments) comprised of a number of assessments of the anticipated impacts of the proposed rule in terms of its expected costs and benefits to affected parties. The regulatory impact analysis must also include assessments of the impact on small entities pursuant to the Regulatory Flexibility Act (RFA) and reporting and recordkeeping burdens under the Paperwork Reduction Act (PRA), as well as an assessment under the Unfunded Mandates Reform Act of 1995 (UMRA).

[50] 31 U.S.C. 5318(l)(2). In addition to the requirements in proposed 31 CFR 1032.220, FinCEN and the SEC are also proposing to revise 31 CFR 1032.100 to define several terms used in proposed 1032.220. This aspect of the proposed rule has no independent substantive requirements or economic impacts.

[51] 89 FR 12108 (Feb. 15, 2024).

[52] USA PATRIOT Act, sec. 326(a)(4).

[53] *See, e.g.,* S.D. Jayasekara, *How Effective Are The Current Global Standards In Combating Money Laundering and Terrorist Financing?,* 24 J. Money Laundering Control (2021). The author finds that countries whose regulations more closely adhere to Financial Action Task Force standards are less likely to see proxies for money-laundering related activities such as bribes, corruption, and crime. *See also* J. Jiao, *Bank Secrecy Act and Casinos' Performances,* 19 J. Acct. Fin. (2019). The author finds that the accounting and market performance of casinos in Nevada converge after the adoption of the BSA, indicating that casinos engage in less money laundering. Further, the market performance of these casinos improves, which is consistent with a positive overall economic impact of the BSA on that industry. However, casinos and some other financial institutions with AML/CFT program requirements do not have CIP requirements. *See* 31 CFR 1021.210, 1022.210, 1028.210. Some academic work disputes the theoretical effectiveness of FATF frameworks with which the U.S. regime largely aligns: *See* R.F. Pol, *Anti-money laundering effectiveness: assessing outcomes or ticking boxes?,* 21 J. Money Laundering Control (2018).

in the Federal system according to the United States Sentencing Commission (''USSC'').[54] These cases involved a median loss of approximately $300,000 and approximately 17.3 percent of these cases involved a loss of greater than $1.5 million.[55] USSC does not provide data that would allow us to determine what percentage of these offenses involved investment advisers. However, a Treasury-led review of SARs filed between 2013 and 2021 found that approximately 15.4 percent of RIAs and ERAs were associated with or referenced in at least one SAR (*i.e.,* they were identified either as a subject or in the narrative section of the SAR) during this time.[56] Further, the number of SAR filings where an RIA or ERA was referenced increased by approximately 400 percent between 2013 and 2021—a disproportionately higher increase than the overall increase in SAR filings during that time, which was approximately 140 percent.[57]

According to Treasury, in its 2024 National Money Laundering Risk Assessment (''NMLRA''), ''[m]oney laundering enables criminal activity and is necessary to disguise ill-gotten gains. It facilitates crime, distorts markets, and has a devastating economic and social impact on citizens. It also threatens U.S. national security as money laundering allows drug traffickers, fraudsters, human trafficking organizations, and corrupt officials, to operate and expand their criminal enterprises.'' [58] Money laundering distorts markets because the incentives for criminals' use of the financial system differ from those of the broader market. Illicit funds also have a probability of seizure that could negatively impact the broader market, as it could increase the rate of return investors demand as compensation for risk and thus firms' cost of capital.[59]

Money laundering also provides the appearance of legitimacy to proceeds of international corruption. By requiring that investment advisers verify the identity of their customers, the proposed rule would make it more difficult for money launderers to use investment advisers as an entry point into the U.S. financial system, reducing money launderers' ability to launder the proceeds of these criminal enterprises and thereby decreasing incentives to engage in these crimes. It would also help address the illicit finance risks identified in NMLRA.[60] As a result, the proposed rule would reduce both monetary as well as nonmonetary costs associated with money laundering involving investment advisers.[61]

Given the overall scale of money laundering in the United States, preventing cases involving investment advisers could have substantial benefits. The NMLRA, has identified several vulnerabilities facing investment advisers and highlights some cases involving investment advisers.[62] The NMLRA cites ERAs, RIAs that are not dually registered as or affiliated with a bank or broker-dealer, and investment advisers managing private funds as the highest-risk types of investment advisers.[63]

AML/CFT regimes can lower the amount of money laundering that occurs by creating barriers to these transactions. Economic theory would suggest that as more entities and transactions are subject to an AML/CFT regime, the deterrent effect of any particular regulation will increase: Illicit dollars attempting to access U.S. financial markets will seek entry via methods that are outside of, or at the weakest point of, an AML/CFT regime. As the number of possible entryways shrinks, these illicit dollars would be funneled into fewer and fewer channels. As the difficulty of laundering illicit dollars thus increases, the marginal cost of using these channels increases at an accelerated rate, further deterring their use. In targeting money laundering involving customers of investment advisers, the proposed rule thus seeks to fill a current gap in the U.S. AML/CFT regime, as recognized by the Financial Action Task Force (''FATF'').[64]

C. Economic Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the proposed rule are measured consists of the current U.S. AML/CFT statutory framework, its regulatory implementation, and current AML/CFT practices of investment advisers and their related parties.

1. Regulatory Baseline

The AML statutory framework in the United States is commonly known as the BSA.[65] Under this framework, many types of financial institutions currently are required to enact AML programs that include a CIP. The SEC has jointly enacted rules with FinCEN that specifically impose CIP requirements on broker-dealers and mutual funds.[66]

While investment advisers are not currently defined as financial institutions under the BSA and are not subject to CIP requirements, certain investment advisers already perform AML/CFT functions, including those associated with a CIP, as a result of existing requirements.[67] Specifically,

[54] USSC, *Quick Facts—Money Laundering Offenses* (2022), *available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Money_Laundering_FY22.pdf.* The USSC is a bipartisan, independent agency located in the judicial branch of the U.S. government; and, as part of its mission, it collects, analyzes, and distributes a broad array of information on federal sentencing practices, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

[55] *Id.*

[56] Investment advisers were not (and are not currently) required to file SARs during the period of analysis, although some investment advisers may do so, for example, if they are also licensed as banks (or are bank subsidiaries), registered as broker-dealers, or advise mutual funds. Investment advisers may also be identified in SARs filed by other entities. SARs may also be related to suspicious activity unrelated to money laundering.

[57] *See* 89 FR at 12114 n.70 and associated text.

[58] Treasury, 2024 National Money Laundering Risk Assessment (Feb. 2024) at 1, *available at home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf.*

[59] As an investment's risk increases, investors typically require a higher rate of return to invest in it. *See also infra* section E for a detailed description for how money laundering can affect efficiency in financial markets.

[60] *See infra* note 63 and associated text.

[61] The economic considerations enumerated here have all been evaluated for investment advisers of different characteristics, particularly both large and small advisers. Small investment advisers have just as much exposure as large ones to the risks of money laundering, financing of terrorism, or movement of funds for other illicit purposes since criminals may seek to place their funds at financial institutions with less sophisticated risk management capabilities.

[62] *Supra* note 58 pp. 85–88.

[63] *Id.* at 87.

[64] FATF is an intergovernmental agency, of which the United States is a member, that was established to promote effective policies to combat money laundering and other financial crimes. *See* FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures—United States,* 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating (Mar. 2020), *available at https://www.fatf-gafi.org/content/dam/fatf-gafi/fur/Follow-Up-Report-United-States-March-2020.pdf.*

[65] 31 U.S.C. 5311 *et seq.*

[66] In this section, ''mutual fund'' has the same definition as in FinCEN's regulations, and refers to an ''investment company'' (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an ''open-end company'' (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the SEC under section 8 of the Investment Company Act (15 U.S.C. 80a–8). *See* 31 CFR 1010.100(gg). Exchange-traded funds (ETFs) are a type of exchange-traded investment product that must register with the SEC under the Investment Company Act and are generally organized as either an open-end company (''open-end fund'') or unit investment trust. The SEC's ETF Rule (rule 6c–11 under the Investment Company Act), issued in 2019, clarified ETFs are issuing ''redeemable securit[ies]'' and are generally ''regulated as open-end funds within the meaning of section 5(a)(1) of the [Investment Company] Act.'' FinCEN's definition of a mutual fund under section 1010.100(gg) applies to an ETF that is registered as an ''open-end company'' (as the term is defined in section 5 of the Investment Company Act).

[67] See 89 FR at 12112 (circumstances where some investment advisers implement AML/CFT measures).

some RIAs and ERAs may perform certain AML/CFT functions, including those associated with a CIP, if the entity is also a registered broker-dealer or a bank (*i.e.,* a dual registrant), or is an operating subsidiary of a bank; other investment advisers are affiliates of banks or broker-dealers, which may implement an enterprise-wide CIP-compliant AML/CFT program that would include investment advisers. Some investment advisers perform these functions via contract with a broker-dealer (*e.g.,* if the investment adviser performs CIP functions for joint customers) or other financial institutions.

In addition, certain investment advisers already obtain identifying information with respect to some accounts or customers. For example, U.S. investment advisers, like all U.S. persons, must comply with OFAC sanctions and U.S. export controls, so they are prohibited from engaging in transactions that violate foreign economic and trade sanctions and export controls imposed by the U.S. government and may engage in due diligence to ensure that they remain compliant with such sanctions and export controls.[68] As another example, advisers may be subject to non-U.S. AML and CIP laws, such as those applicable to private funds organized in the Cayman Islands.[69]

Since the USA PATRIOT Act was passed, multiple rules have been proposed that would have required some investment advisers to apply AML/CFT requirements. While the substantive requirements contained in these proposals are not part of the baseline for the present rulemaking, some investment advisers have developed AML/CFT measures consistent with these prior proposals, as discussed in the next section. Specifically, on September 26, 2002, FinCEN published an NPRM proposing to require that unregistered investment companies, to include private funds, establish AML programs.[70] This was followed by the May 5, 2003, NPRM proposing to require certain investment advisers to establish AML programs.[71] On September 1, 2015, FinCEN published an NPRM ''to prescribe minimum standards for . . . [AML] programs to be established by certain investment advisers and to require such investment advisers to report suspicious activity to FinCEN pursuant to the . . . BSA'' (''Second Proposed Investment Adviser Rule'').[72] This proposed rule would have included RIAs within the definition of ''financial institution'' under the BSA and required them to maintain AML programs, report suspicious activity, and comply with other travel and recordkeeping requirements, but would not have included ERAs in the scope of the rule nor would it have established minimum CIP requirements.

Some financial institutions are required to establish a CIP that would include procedures for determining whether a customer appears on lists of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators.[73] While no such lists have been designated by Treasury for any financial institution, our understanding is that some financial institutions, including some investment advisers, already check their customers against OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List'').[74]

2. Market Practice

While not legally required, some investment advisers currently have voluntary AML/CFT programs, which may be CIP-compliant.[75] Investment advisers also collect identifying information to perform operational tasks such as distinguishing between customer accounts, or contacting their customers for the purposes of sending administrative, regulatory, or other notices.

The 2016 Investment Management Compliance Testing Survey (''2016 IMCTS Survey'') collected information from approximately 700 RIAs on their existing implementation of AML/CFT measures.[76] According to this survey, as of 2016, approximately 40 percent of RIAs had already adopted AML/CFT policies consistent with the Second Proposed Investment Adviser Rule. An additional 36 percent of RIAs adopted some AML/CFT policies and procedures, but those were generally not in line with the Second Proposed Investment Adviser Rule. Therefore, according to the 2016 IMCTS Survey, approximately 76 percent of RIAs have at least some AML/CFT measures in place. In particular, 49 percent had annual employee AML/CFT training, 24 percent had a designated AML/CFT compliance officer, and 40 percent performed independent testing of their AML/CFT program annually. Similar information was not available for ERAs. While this survey did not ask a question about CIPs specifically, it is possible that some advisers did have a CIP as part of their AML/CFT policies and procedures.

Some investment advisers currently outsource some or all of the work needed for investment advisers or other parties to comply with regulatory requirements.[77] A variety of third-party firms (*e.g.,* fund administrators) exist that assist investment advisers in complying with their regulatory responsibilities and contractual obligations.

3. Affected Parties

As of October 5, 2023, there were 14,914 RIAs, with roughly $114 trillion assets under management and 931,000 employees.[78] There were also 5,546 ERAs with additional gross assets of $5.2 trillion (ERAs do not report the number of employees).[79] RIAs had

[68] For instance, OFAC's Framework for Compliance Commitments note that ''One of the fundamental components of an effective OFAC risk assessment and [sanctions compliance program] is conducting due diligence on an organization's customers, supply chain, intermediaries, and counter-parties.'' OFAC, *A Framework for Compliance Commitments* (May 2019), *available at https://ofac.treasury.gov/media/16331/download?inline.*

[69] *See* The Cayman Islands Private Funds Act (2021 Revision) and associated regulations.

[70] *See* FinCEN, Anti-Money Laundering Programs for Unregistered Investment Companies, 67 FR 60617 (Sept. 26, 2002).

[71] *See* FinCEN, Anti-Money Laundering Programs for Investment Advisers, 68 FR 23646 (May 5, 2003).

[72] *See* FinCEN, Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 FR 52680 (Sept. 1, 2015).

[73] *See* 31 CFR 1020.220(a)(4), 1023.220(a)(4), 1024.220(a)(4), 1026.200(a)(4).

[74] *See, e.g.,* Managed Funds Association Sound Practices for Hedge Fund Manager, at n.15 and accompanying text (2009), available at *https://www.mfaalts.org/wp-content/uploads/2011/06/Final_2009_complete.pdf.*

[75] *See* note 68.

[76] *See* 89 FR 12145 n.239 and associated text. This survey included responses from compliance officers at 730 RIAs and is the most recent IMCTS survey to have asked detailed questions about AML policies and programs.

[77] The 2023 Investment Management Compliance Testing Survey, which surveys RIAs, found that 38% of those surveyed use a third party to perform compliance functions, a*vailable at https://www.investmentadviser.org/wp-content/uploads/2023/07/IMCT-Final-Report.pdf.*

[78] This number is an estimate of all registered investment advisers with at least one client based on responses to Item 5.D of Form ADV, as of Oct. 5, 2023. We note that this figure is likely an overestimate because Form ADV does not allow us to separate advisers to only open-end investment companies, which generally would be excluded from this proposed rule since an investment adviser may deem the requirements satisfied for any mutual fund (as defined in 31 CFR 1010.100(gg)) it advises that has developed and implemented a CIP compliant with the CIP requirements applicable to mutual funds, from advisers to closed-end investment companies, which would be included.

[79] The number of RIAs and ERAs, their assets under management, and RIA employees are estimated using Form ADV data, as of Oct. 5, 2023.

approximately 51.5 million natural person customers and 2.9 million legal entity customers.[80]

D. Benefits and Costs

1. Benefits

The provisions added to the BSA from section 326 of the USA PATRIOT Act facilitate the prevention, detection, and prosecution of money laundering and the financing of terrorism. Section 326 requires financial institutions to establish CIP programs. If the AML/CFT Program and SAR Proposed Rule is adopted, investment advisers will be financial institutions under the BSA and in such event the BSA would require specifying how an investment adviser is to establish and execute a CIP program.

Obtaining and verifying the identity of account holders or responding to circumstances in which the investment adviser cannot form a reasonable belief that it knows the true identity of a customer would reduce the risk of terrorists and other criminals accessing U.S. financial markets to launder money, finance terrorism, or move funds for other illicit purposes. Comparing customer identities to those on government lists of known or suspected terrorists or terrorist organizations would assist investment advisers in identifying and preventing criminal activity.[81] Maintaining records would enhance investment advisers' internal compliance efforts and aid investment advisers in detecting and taking measures to prevent potential illegal activity and in identifying customers who have newly been added to such government lists. For example, in the event that an investment adviser's customer is flagged by screening software, maintaining records as required by the proposed rule would assist investment advisers in determining whether this flag was a false positive or whether the customer was truly added to a relevant government list. Establishing a CIP would help investment advisers systematize, and in some cases automate, practices that would facilitate detection of attempted financial crimes and would help ensure that investment advisers have practices that are as effective as possible at deterring financial crimes.

In circumstances where investment advisers are or could be performing CIP activities for certain entities that already have CIP obligations, the obliged entities (such as banks and broker-dealers) may not necessarily have a direct relationship with the customer. In such cases, investment advisers may be able to more efficiently perform CIP obligations such as collecting the required information from these customers because they have a more direct relationship with these customers. The proposed rule would aim to harmonize investment adviser CIP obligations with those of other obliged entities, which could enhance the benefits to the public and reduce the total costs imposed on the industry of these CIP obligations since investment advisers and other obliged financial institutions can decide by contract which party is most efficiently able to execute the CIP and the current disparity in CIP requirements may be distorting these negotiations. To the extent that investment advisers already have practices consistent with the requirements of the proposed rule either because of these extant obligations or for operational efficiency,[82] the benefits of the proposed rule described above would be mitigated.

The proposed rule would only require investment advisers to collect and verify the identity of customers that directly open and hold accounts (as defined in the proposed rule) with the adviser. The proposed rule's benefits would thus only apply in cases of money laundering activity involving those customers and not other individuals or entities. For example, an investment adviser may have a private fund as a customer. In this case, the proposed rule would require that the investment adviser collect the identifying information of the private fund and, in some cases, individuals with authority or control over such private fund,[83] but not that of those invested in such fund. In certain contexts, an investment adviser may itself be the individual with authority or control over the private fund.

Similarly, the benefits of the proposed rule would also be lessened to the extent that an investment adviser's customer holds accounts for purposes other than accessing financial markets (for example, if the customer holds an account only to receive investment research services).[84] In such cases, the benefits associated with protecting financial markets would not directly apply, although the other benefits discussed above would apply.[85]

It is difficult to estimate how much economic loss the requirements would prevent. Neither the SEC nor FinCEN has data that would allow the quantification of how much money laundering would be reduced as a result of the proposed rule, or how much other illegal activity would be curbed by this reduction in money laundering.[86] Money laundering and other illicit financing is related to human trafficking, drug trafficking, terrorism, public corruption, the proliferation of weapons of mass destruction, fraud, and other crimes and illicit activities that cause substantial monetary and nonmonetary damages.[87] By reducing money laundering, and by extension its associated crimes, the proposed rule would reduce those harms to the extent that investment advisers are being used to facilitate such unlawful activity.

2. Costs

While certain provisions of the proposed rule specify minimum requirements, such as the pieces of information required to be obtained and verified, many aspects of the proposed rule require an investment adviser to establish and implement its CIP according to its specific circumstances. For example, under the proposed rule, the CIP must be based on factors specific to each investment adviser, such as size, customer base, and location. Thus, the analysis and detail necessary for a CIP would depend on the complexity of the investment adviser and its operations. Highly complex firms have more risk factors to consider, given, for example, their number of offices, variety of services and products offered, and range of customers. However, many of these firms already have some AML/CFT

ERAs report gross assets for each fund they advise, but only if that fund is not reported by another RIA in its own Form ADV; therefore, some ERAs report zero gross assets because all of the funds they advise are also reported by another RIA.

[80] Estimated from Form ADV data, as of Oct. 5, 2023.

[81] *See infra* section IV.D.2.c for caveats related to the likely costs of this provision which also apply to the benefits.

[82] *See supra* section IV.C.1 and 2.

[83] The adviser would be required to obtain information about individuals with authority or control over the account only when the adviser cannot verify the true identity of a customer that is not an individual using the documentary and non-documentary methods described in the rule. *See* proposed rule 1032.220(a)(2)(ii)(C).

[84] However, these services could also be used to facilitate other aspects of the money laundering process.

[85] *See infra* section IV.G.2 for a fuller discussion of these types of accounts.

[86] *See infra* section IV.F for a request for comment about the availability of such data.

[87] For further discussion of the harms and risks associated with money laundering, *see* Treasury, National Strategy for Combating Terrorist and Other Illicit Financing (2018), *available at https://home.treasury.gov/system/files/136/nationalstrategyforcombatingterroristandotherillicitfinancing.pdf; see also* Treasury, National Money Laundering Risk Assessment (2024), *available at, https://home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf.*

procedures in place and investment advisers already collect some identifying information that they would be required to collect under the proposed rule.[88]

Generally, these requirements are similar to those for other financial institutions with which investment advisers engage. Many advisers may already bear the cost of these similar CIP requirements for other financial institutions in certain lines of business in ways that would reduce the costs of complying with the proposed rules, and in such cases the proposed rules would create minimal additional costs. Some RIAs and ERAs may have reduced costs because they may already perform certain AML/CFT functions, including those associated with a CIP, because they are dual registrants or affiliated with a bank or broker-dealer.

Under the proposed rule, RIAs that are dual registrants or affiliated advisers would not be legally required to establish a separate CIP for their advisory activities, provided that an existing comprehensive CIP-compliant AML/CFT program covers all the entity's legal and regulatory obligations under the proposed rule. RIAs would also be exempt from having to apply most of the proposed requirements with respect to the mutual funds they advise, as mutual funds have their own CIP requirements and are otherwise required to comply with the other reporting and recordkeeping requirements included in the proposed rule. Certain RIAs and ERAs may also already collect and verify certain information provided by customers via contract for a joint customer with another financial institution or through a voluntary AML/CFT program.[89]

Some investment advisers may have similarly reduced costs even if they do not currently directly perform CIP-related AML functions. In particular, investment advisers that use broker-dealers on behalf of their customers but that do not perform the procedures required by the broker-dealer's CIP may currently already bear some or all of the proposed rule's costs indirectly. Specifically, these investment advisers could bear such costs in the form of higher charges for the broker-dealer's services, since these broker-dealers are already required to comply with similar CIP requirements related to their joint customers. In such cases, investment advisers would face new costs associated with the proposed rule, but these may be offset at least in part by reduced costs for broker-dealer services.

The proposed rule would only require investment advisers to collect and verify the identity of customers that directly open and hold accounts (as defined in the proposed rule) with the adviser. This scope of the rule would mitigate the proposed rule's costs just as it would mitigate the proposed rule's benefits as described above.[90]

In addition, investment advisers may deem the requirements of the proposed rule for any mutual fund to be satisfied if the customer (*i.e.,* the mutual fund it advises) has developed and implemented a CIP that is compliant with the investment company's CIP requirements. This provision further lowers the aggregate cost of the proposed rule by negating or minimizing the cost associated with customers that are mutual funds.

(a) Establishing a CIP

RIAs and ERAs would have to establish or in some instances modify a CIP to comply with the requirements of the proposed rule unless they currently have in place a CIP consistent with the proposed rule's requirements. Creating or modifying the policies and procedures detailed in the CIP would entail costs for these advisers. However, investment advisers may already have procedures in place for obtaining identifying information of customers and some investment advisers may have already implemented voluntary AML/CFT programs that are CIP-compliant or that could serve as a framework for a CIP that is consistent with the minimum requirements of the proposed rule.[91] Some investment advisers may have already implemented voluntary AML/CFT programs that are CIP-compliant. In particular, certain investment advisers that use broker-dealers or other financial institutions on behalf of their customers may have these programs in place, as these programs assist those financial institutions to comply with their CIP obligations.[92] Accordingly, such investment advisers may already have written policies and procedures for conducting these or similar activities. The existing infrastructure related to extant practices would reduce the cost of complying with the proposed rule.

Establishing a written CIP would result in additional costs for some investment advisers to the extent they do not have policies and procedures that meet the minimum requirements in the rule. This includes investment advisers that would need to augment their policies and procedures to make them compliant, and costs associated with programming and testing automated systems. FinCEN and the SEC estimate that the average internal time cost for an investment adviser to establish, document and maintain a written CIP as described above would be $1,169.30, with most investment advisers incurring additional ongoing external costs of $584.[93] These estimates imply $23,923,878 in aggregate industry internal costs and $8,961,480 in aggregate industry annual external costs.[94]

(b) Obtaining and Verifying Identifying Information

The proposed rule would require an investment adviser's CIP to contain procedures that specify the identifying information that will be obtained with respect to each customer. This information must include, at a minimum, the name, date of birth (or date of formation), address, and identification number of customers opening new accounts. Investment advisers already obtain from customers identifying information, such as their names and addresses, since most investment advisers need to distinguish their customers operationally and these particular forms of personally identifiable information are common ways of doing so.

Despite this, we estimate that there would be some new costs for investment advisers because some may not be obtaining all the information required by the proposed rule or doing so consistently. These investment advisers would face additional costs in collecting this information and updating their account opening applications or account opening websites to insert line items requesting that customers provide the required information.

The proposed rule would further require an investment adviser's CIP to include procedures to verify the identity of each customer and would provide investment advisers with multiple possible methods to do so. For example, depending on the procedures implemented based on the investment adviser's assessment of the relevant risks, customers that open accounts with an investment adviser can simply provide an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport, or if the

[88] *See supra* section IV.C.

[89] *See supra id.*

[90] *See supra* section IV.D.1.

[91] *See supra* sections IV.C.1 and 2.

[92] *See* note 68.

[93] *See* the PRA analysis in Table 1, *infra* section V.B. Internal costs in this section are annual ongoing costs and include initial costs annualized over a three-year period. External ongoing costs are annual.

[94] *Id.*

customer is not an individual, provide a copy of any documents showing its existence as a legal entity (*e.g.,* certified articles of incorporation, government-issued business licenses, partnership agreements, or trust instruments and any amendments to such documents). Alternatively, investment advisers may, for example, obtain a financial statement from the customer or compare the information provided by the customer with information obtained from a consumer reporting agency or public database.

The documentary and non-documentary verification methods set forth in the rule to verify the identities of customers are not meant to be an exclusive list of the appropriate means of verification. Other reasonable methods may be available now or in the future. The purpose of making the rule flexible in this regard would be to allow investment advisers to select verification methods that are, as section 326 would require, reasonable and practicable. Methods that are appropriate for an investment adviser with a localized customer base may not be sufficient for a different firm with customers from many different countries. The proposed rule recognizes this fact and, therefore, would allow investment advisers to employ such verification methods as would be suitable to form a reasonable belief that it knows the true identities of its customers.

The SEC and FinCEN recognize that obtaining and verifying the identity of each customer would result in incremental costs for many investment advisers if these firms currently do not use verification methods or do not verify identities in a way that is consistent with the proposed rule's requirements. According to the PRA analysis in section V, the average cost of an ERA with two customers (the median number of ERA customers) to obtain and verify the identifying information as described above would be $212.60 in internal cost burdens with most ERAs facing an additional $46.72 in annual ongoing external costs.[95] Similarly, the average internal cost burden for an RIA with 100 customers (the median number of RIA customers) would be $10,630, with most RIAs facing ongoing external annual costs of $2,336.[96] These estimates are based on averages and do not reflect the fact that costs will vary between investment advisers for myriad reasons. In particular, ERA customers are limited to venture capital funds and other private funds. These customers would likely have a smaller per-customer cost than natural person customers.

The proposed rule would also require an investment adviser's CIP to include procedures for responding to circumstances in which the investment adviser cannot form a reasonable belief that it knows the true identity of a customer. While the direct costs of this requirement are included in the estimate above, this requirement may create an additional unquantifiable indirect cost. Specifically, to the extent that any customers who are not intended to be targeted by the proposed rule may be unable to have their identities verified, and thus be subjected to the consequences of this failure to identify (for example, being unable to receive services from the investment adviser), there would be costs associated with temporarily (or possibly in unusual unforeseen circumstances, permanently) losing or having diminished access to financial markets.

(c) Determining Whether Customers Appear on a Federal Government List

The proposed rule would require an investment adviser's CIP to include reasonable procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Treasury and the Federal functional regulators have not yet designated any such lists. However, for purposes of this economic analysis, we nonetheless estimate the costs of complying with this provision if such lists were to be designated. Our understanding is that some investment advisers and other financial institutions already check their customers against the SDN List. Since the SDN List is often checked in practice and since the creation of such lists that could be provided to investment advisers is a reasonable consideration given this provision in the proposed rule, we are estimating the costs of complying from the current screening practices using the SDN List. We assume, based on staff experience with firms that already check against government lists, that for most accounts this process would be automated and conducted on a batch-file basis, though with significant manual intervention to address false positives. We estimate that the average cost to an ERA with two customers to check such lists would consist of $170.08 in internal time costs with no additional ongoing external costs.[97] Similarly, for the average cost of an RIA with 100 customers would be $8,504 in internal costs with no additional ongoing annual external costs.[98] These estimates are based on averages and do not reflect the fact that costs will vary between investment advisers for myriad reasons. In particular, ERA customers are limited to venture capital funds and other private funds. These customers are exceedingly unlikely to be placed on government lists, and so the costs of compliance with this provision will be lower for ERAs or other types of advisers that solely have funds as customers.

(d) Providing Notice to Customers

The proposed rule would require an investment adviser's CIP to include procedures for providing their customers adequate notice that the investment adviser is requesting information to verify their identities. Notice would be considered adequate under the proposed rule if the investment adviser generally describes the identification requirements in the proposed rule and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, if an account is opened electronically, such as through an internet website, the investment adviser may provide notice electronically. We estimate the average internal cost burden of an ERA with two customers to provide notice to customers to be $17, with most ERAs facing annual ongoing external costs of $23.36.[99] Similarly, the average internal

[95] *Id.* The PRA analysis in Table 1 estimates an average internal cost of $106.30 per customer, so an ERA with two customers would face an internal cost of 2 × 106.30 = $212.60. It additionally estimates that 75% of investment advisers would require an average annual external burden of $23.36 per customer, so an ERA with two customers would face an external cost of 2 × $23.36 = $46.72.

[96] *Id.* An RIA with 100 customers would face an internal cost of 100 × 106.30 = $10,630 and would likely face an annual external burden of 100 × $23.36 = $2,336. For this and other costs, mutual fund customers are included in our counts of customers and so they are included in these cost calculations despite the fact that investment advisers may consider their obligations under the proposed rule to be satisfied under certain circumstances for mutual fund customers. This factor will overestimate costs.

[97] *Id.* The PRA analysis in Table 1 estimates an average internal cost of $85.04 per customer, so an ERA with two customers would face an internal cost of 2 × 53.15 = $170.08.

[98] *Id.* An RIA with 100 customers would face an internal cost of 100 × 85.04 = $8,504.

[99] *Id.* The PRA analysis in Table 1 estimates an average internal cost of $8.50 per customer, so an ERA with two customers would face an internal cost of 2 × 8.50 = $17. It additionally estimates that 75% of investment advisers would require an

Continued

cost burden of an RIA with 100 customers would be $850, with most RIAs facing additional ongoing annual external costs of $1,168.[100] These estimates are based on averages and do not reflect the fact that costs will vary between investment advisers for myriad reasons.

(e) Recordkeeping

The proposed rule would require an investment adviser's CIP to include procedures to make and retain records of customers' identifying information for five years after the date of closing of the account and records regarding the verification of a customer's identity for five years after the record is made. We estimate that many of the records required by the rule are already made and maintained by investment advisers. As discussed above, investment advisers already obtain some of the minimum identifying information specified in the proposed rule, and this information is retained for use in firms' operations.[101] We estimate that the recordkeeping requirement could result in additional costs for some investment advisers that currently do not maintain certain of the records for the prescribed time period. We estimate that the average cost to an ERA with two customers to make and maintain the required records would be an internal cost burden of $106.30 with no additional ongoing external costs.[102] Similarly, the average internal cost burden to an RIA with 100 customers would be $5,315, with no additional annual external costs.[103] These estimates are based on averages and do not reflect the fact that costs will vary between investment advisers for myriad reasons.

(f) Reliance on Another Financial Institution

The proposed rule allows an investment adviser to, under certain circumstances, rely on another financial institution to perform any of the procedures associated with the adviser's CIP. This provision would generally lessen the direct compliance cost of the rule since it would allow these procedures to be done by the party most efficiently positioned to do so and would decrease the likelihood that multiple parties will perform duplicative tasks to comply with regulations affecting different entities. While there may be costs associated with entering or modifying a contract with another financial institution to ensure that the contract's terms have language required by this provision, and there may be monitoring costs to ensure compliance, investment advisers can generally choose to not rely on another financial institution instead if those costs are greater than the cost mitigation that comes from relying on said financial institution.

(g) Summary and Overall Costs

We recognize that the actual costs associated with establishing a CIP will vary from the estimates above depending on the size of the investment adviser, its lines of businesses, the relevant risks to be addressed by the investment adviser's CIP, and the extent to which the investment adviser's current practices would need to be modified to comply with the requirements. We estimate that the average total cost to an ERA with two customers to comply with the proposed rules would be an internal cost burden of $1,675, with most ERAs facing total annual ongoing external costs of $654.[104] Similarly, the average total internal cost for an RIA with 100 customers would be $26,468, with most RIAs facing total ongoing annual external cost burdens of $4,088.[105] We further estimate total aggregate industry costs of: $404,045,339 in internal time costs and $ 48,446,970 in annual external time costs.[106]

We also recognize that these costs would not necessarily be borne solely by investment advisers. Some of these costs could be passed on to the funds and other customers managed by investment advisers. The extent to which these costs would be passed on to customers depends on the interplay of relevant market forces and thus is impossible to predict with accuracy.

The proposed rule provides that the SEC, with the concurrence of the Secretary, may by order or regulation exempt any investment adviser or any type of account from the requirements of this section, or that the Secretary, with the concurrence of the SEC, may exempt any investment adviser or type of account. In issuing such exemptions, the SEC and the Secretary will consider whether the exemption is consistent with the purposes of the BSA, and in the public interest, and may consider other necessary and appropriate factors. This could provide another way to mitigate costs in unforeseen circumstances. For example, if the SEC and the Secretary determine that it is not in the public interest for certain types of accounts to be subject to the requirements of the proposed rule, they may exempt these accounts.

Investment advisers would be required to develop and implement a CIP that complies with the requirements of the proposed rule on or before six months from the effective date of the regulation. Because the overall development burdens are relatively low,[107] we do not believe that this timeline would impose additional costs beyond the direct costs of compliance as quantified in the PRA.

E. Effects on Efficiency, Competition, and Capital Formation

We expect that the requirements would have minimal impact on efficiency, competition, and capital formation. Relative to the size of investment markets, the magnitude of assets that are intended to be targeted are relatively small. Nasdaq estimates that $3.1 trillion in illicit funds entered the global financial system in 2023.[108] State Street Global Advisors, by contrast, has estimated the global market portfolio (the value of all investable capital assets) to be $179 trillion as of December 31, 2021.[109] These estimates suggest that the proposed rule could, at a maximum, impact 1.7 percent of global market funds using an average investment holding period for illicit funds of one year and making the extreme assumption that all illicit funds that enter the global financial system do so through investment advisers.[110] The

average annual external burden of $11.68 per customer, so an ERA with two customers would face an external cost of 2 × $11.68 = $23.36.

[100] *Id.* An RIA with 100 customers would face an internal cost of 100 × 8.50 = $850 and would likely face an annual external burden of 100 × $11.68 = $1,168.

[101] *See supra* section IV.C.

[102] The PRA analysis in Table 1, *infra* section V.B, estimates an average internal cost of $53.15 per customer, so an ERA with two customers would face an internal cost of 2 × 53.15 = $170.

[103] *Id.* An RIA with 100 customers would face an internal cost of 100 × 53.15 = $5,315.

[104] This cost is the sum of the analogous costs listed in sections IV.D.2.a through e.

[105] *See* the PRA analysis in Table 1, *infra* section V.B.

[106] *Id.*

[107] The PRA analysis in Table 1, *infra* section V.B, estimates the total average cost of developing a CIP to be $1,753.

[108] *See* 2024 Global Financial Crime Report, Nasdaq (2024), *available at https://nd.nasdaq.com/rs/303-QKM-463/images/2024-Global-Financial-Crime-Report-Nasdaq-Verafin-20240115.pdf.*

[109] *See* Frederic Dodard and Amy Le, Global Market Portfolio: Value of Investible Assets Touches All-Time High, State Street Global Advisors (Feb. 2022), *available at https://www.ssga.com/library-content/pdfs/global/global-market-portfolio-value-of-investable-assets-touch-all-time-high.pdf.*

[110] Since the estimate of $3.1 trillion entering the market is a flow measure while the $179 trillion estimate of total asset value is a stock measure, to compare the two, some assumption is needed about the average duration for which investments remain in the financial system. For example, if we were to assume an average holding period of two years, then the estimate of the percentage of global market

actual impact is likely to be much lower because investment advisers do not facilitate all funds in the global financial system, and the average time of investment for funds used in money laundering is likely to be shorter than one year.[111] Further, the costs associated with compliance are small enough relative to assets managed by investment advisers so as not to have a significant impact on competition in the investment adviser market.[112]

To the extent that the rule would be effective at preventing illicit assets from entering financial markets—for example, if it deters money launderers from attempting to do so or assists investment advisers and law enforcement in discovering these activities—there may be impacts on market efficiency. Specifically, those that engage in money laundering or finance terrorism are likely to have incentives for investment unrelated to the expected return or risk of the asset that differ from the broader market. As a result, their investments change the equilibrium of expected asset risks and returns from what would exist in a market without these illicit funds. For example, money launderers could have very different time horizons for investment and thus could have different liquidity preferences, and so their investments could drive up the premium for liquidity. They likely also have a greater desire to keep their identity hidden and so may choose assets based on this feature. To the extent that money launderers invest based on preferences different from those of the broader market, asset values could, as a result, be distorted relative to what would be efficient for the broader market. Accordingly, it is possible that removing those funds from financial markets would increase market efficiency. The extent to which market efficiency would increase depends on how different money launderers' investment preferences are from those of other investors and how much capital would be effectively prohibited from entering financial markets. We would generally expect these effects to be small, however, given that the magnitude of assets that are intended to be targeted are relatively small compared to the size of investment markets, as discussed above.

Competition may decrease because of the additional compliance costs associated with the proposed rule. However, the relatively small magnitude of estimated costs of the proposed rule, as compared to total assets under management of advisers, suggests that this effect is unlikely to be significant.

The proposed rule is unlikely to have a significant effect on capital formation. To the extent that investors choose to invest more in financial markets because they believe that the proposed rule would reduce the risk of investing by removing illicit funds from the market, capital formation could increase.

F. Request for Comment

FinCEN and the SEC seek comment on all aspects of the economic analysis of the proposed rule, including whether the analysis accurately characterizes the costs and benefits of the minimum requirements set forth by the proposed rule, and whether the specific form of the requirements creates costs or benefits that are not attributable to the statute. To the extent possible, we request that commenters provide supporting data and analysis. In particular, we ask commenters to consider the following questions:

(1) In section IV.B, we state that we do not know what percentage of money laundering crimes sentenced involve investment advisers. Are there sources of data that estimate this percentage? In what ways would this figure be useful for assessing the benefits associated with the proposed rule that is not achieved by the available Treasury analysis of SAR reports?

(2) In section IV.C.1, we state that some investment advisers may already check their customers' accounts against the SDN List. To what extent do investment advisers currently check the SDN List and what factors lead an investment adviser to do so?

(3) In sections IV.C.2 and IV.D.2., we state that investment advisers already collect identifying information required under the proposed rule, either because of contractual obligations or out of operational considerations. Under what circumstances do investment advisers not already collect or retain records of some or all of this information?

(4) In section IV.D.1, we state that we do not have data that would allow us to assess how much money laundering would be reduced as a result of the proposed rule, or how much other illegal activity would be curbed by this reduction in money laundering. What, if any, data exists regarding this activity

(5) In section IV.D.2, we state that some investment advisers may already bear some of the costs of this rule as a result of similar extant requirements on other financial institutions. Is this assumption correct, and if so, how prevalent is this practice?

(6) In Section IV.D.2, we state that allowing an investment adviser to, under certain circumstances, rely on another financial institution to perform any of the procedures associated with the adviser's CIP would generally lessen the direct compliance cost of the rule. To what extent is any anticipated reduction of costs likely to occur, considering the costs of relying on such institutions?

(7) To what extent do investment advisers currently rely on third-party service providers to perform functions related to AML/CFT responsibilities, particularly those associated with a CIP? Would the proposed rule increase or decrease investment advisers' reliance on third-party service providers to perform these functions? If the proposed rule increased investment advisers' reliance on third-party service providers to perform these functions, what additional costs would result?

(8) In places where the costs of the proposed rule are estimated, are these estimates reasonable? Are there any data that could inform the cost estimates of complying with any provisions of the proposed rule? To what extent are there important determinants of costs that could vary between investment advisers that we have not considered in this analysis?

(9) In section IV.G, we discuss the possibility of requiring the Legal Entity Identifier (''LEI'') as the identifier for non-natural person customers. Should the final rule require advisers to use the LEI as the identifier for such customers?

(10) If the adviser knows or has reason to know a customer's assets are maintained at a financial institution that performs CIP requirements because the financial institution is subject to BSA obligations, what would be the benefits and costs of an adviser being required to comply with the proposed rule?

funds impacted would double. Conversely, if we were to assume an average holding period of six months, then that estimate would halve.

[111] While some money laundering, such as using private funds, may be geared towards long time horizons, other illicit financial activity likely has a shorter duration than one year. However, it is possible that the rule could, over time, impact a larger percentage of global financial market assets if these funds remain in the market for more than one year, on average.

[112] For example, we estimate (*supra* section IV.D.2.g) that the median ERA would face a total burden of $2,327 (equal to the internal burden of $1,675 plus the external burden of $654) and the median RIA would face a total burden of $30,572 (equal to the internal burden of $26,468 plus the external burden of $4,088). Meanwhile, the average RIA has assets under management of roughly $8 billion and the average ERA has assets under management of roughly $900 million.

G. Reasonable Alternatives

1. Requiring the Use of Legal Entity Identifier (''LEI'') as the Identifier for Legal Entities Other Than Natural Persons

The proposed rule allows various forms of identification for non-natural person customers. We considered whether investment advisers should be required to use the LEI or some other uniform standard as the identifier for such customers.

The LEI is an identification number based on the International Organization for Standardization (''ISO'') 17442–1 standard that uniquely identifies a legal entity.[113] It can facilitate the automatic processing of financial transactions and is used in financial regulatory reporting. For example, the SEC requires an adviser to provide an LEI, if it has one, on Item 1.P on Form ADV.[114]

Using the LEI would assist investment advisers and enforcement agencies in detecting money laundering more effectively than using a broad array of identifiers because of its uniformity and relative ease of analysis (*e.g.,* minimizing any need to map disparate jurisdictional identifiers), though this may be mitigated by the proposed rule's scope which is limited to the direct customers of an adviser and not its beneficial owners. However, this is balanced against the flexibility provided to investment advisers to comply with the rule's requirements. Further, since natural persons could not use this identifier, rule compliance would already necessitate collecting different types of identifiers for these individuals. Moreover, omitting an LEI requirement from the proposed rule would be consistent with the existing rules for broker-dealers and mutual funds, and notwithstanding the absence of an LEI requirement, customers could still provide their LEIs to help advisers satisfy their obligations under the proposed rule. Finally, because legal names and associated LEIs are publicly available, bad actors could use such information to impersonate legitimate entities in their submissions to an investment adviser's CIP and reduce the reliability of the LEI as an identification tool.

[113] *See* ISO 17442: The Global Standard, available at *https://www.gleif.org/en/about-lei/iso-17442-the-lei-code-structure.*

[114] *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, 76 FR 42950 (July 19, 2011).

2. Exceptions for Customers That Do Not Use Investment Advisers To Access Financial Markets

The proposed rule would require an investment adviser's CIP to apply to all types of accounts,[115] though the adviser may consider the type of account in determining what procedures are appropriate. We considered whether accounts of customers that do not use the investment adviser to access financial markets, such as those that only receive investment research services, should be excluded from the definition of account.

The benefits of the rule related to such accounts are lower than for other accounts because the benefits relating to protecting financial markets do not directly apply. However, other benefits discussed above, including those relating to identifying criminal activity and preventing illicit proceeds from being legitimized still apply. Further, criminal networks could still use investment adviser products to inform their investment decisions or use investment advisers as ways of appearing legitimate to broker-dealers or other financial institutions. For example, criminals could potentially gain information on how to place or layer illicit funds, even if the investment adviser is not actually doing the placing or layering. An investment adviser's CIP must assess the relevant risks and enact procedures that take account of these risks.

Excluding or otherwise excepting these accounts would eliminate the benefits of the rule for these accounts, but could also reduce the costs of compliance with the rule, if the costs of differentiating these accounts are not higher than the costs of complying with the rule for these accounts. However, we do not believe that these cost savings would be large because: (1) the cost per account of the rule is relatively low; (2) to the extent that these accounts create less risk than do other types of accounts, the compliance cost of these accounts under the proposed rule could be even lower than for other accounts if investment advisers enact procedures with lower costs than those they would establish for riskier types of accounts; and (3) differentiating these accounts may be relatively costly, as investment advisers would need to create new systems to identify which customers only have accounts that would fit the exclusion.

[115] Under certain circumstances, the requirements can be deemed satisfied for mutual fund customers.

V. Paperwork Reduction Act

A. Introduction

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[116] The proposed rule would include new information collection burdens. The title of new collection of information we are proposing is ''Amendment to 31 CFR part 1032 under the USA PATRIOT Act.'' OMB has not yet assigned a control number for this title. We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[117] 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. We discuss below the collection of information burdens associated with the proposal.

B. Proposed Rule

If FinCEN's proposed AML/CFT Program and SAR Proposed Rule[118] is adopted, section 326 of the USA PATRIOT ACT would require Treasury and the Commission to prescribe regulations setting forth minimum standards for investment advisers regarding the identities of customers when they open an account. Section 326 also provides that the regulations issued by Treasury and the Commission must, at a minimum, require investment advisers to implement reasonable procedures for: (1) verification of the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintenance of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determination of whether the person appears on any lists of known or suspected terrorists or terrorist organizations issued by any government agency.[119] These requirements are referred to as Customer Identification Program (''CIP'') regulations and are long-standing, foundational components of the United States' AML/CFT regime. Under this proposed rule, the CIP must be based on the investment adviser's assessment of the relevant risks, including, at a minimum, those presented by the various types of

[116] 44 U.S.C. 3501.

[117] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[118] FinCEN, Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, 89 FR 12108 (proposed Feb. 15, 2024).

[119] 31 U.S.C. 5318*(l).*

accounts maintained by the investment adviser, the various methods of opening accounts provided by the investment adviser, the various types of identifying information available and the investment adviser's size, location, and customer base.[120]

Under this proposed rule, an investment adviser would be required to retain (1) the identifying information obtained from a customer while the customer's account remains open and for five years after the date the account is closed and (2) the records pertaining to the verification of a customer's identity for five years after the record is made.[121] Each requirement to disclose information, offer to provide information, or adopt policies and procedures constitutes a ''collection of information'' requirement under the PRA.[122] The respondents to these collection of information requirements would be RIAs and ERAs. As of October 5, 2023, there were approximately 14,914 RIAs and approximately 5,546 ERAs.[123] This collection of information is found at 31 CFR 1032.220 and is mandatory. All RIAs and ERAs would be subject to the requirements of the proposed rule. Responses provided to the Commission in the context of its examination and oversight program concerning the proposed rule would be kept confidential subject to the provisions of applicable law.

Investment adviser implementation of CIPs and reasonable procedures related thereto under this proposed rule would make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism by (i) specifying the information investment advisers must obtain from or about customers that can be used to verify the identity of the customers, (ii) requiring investment advisers to maintain and retain records of the information used to verify the customer's identity, and (iii) requiring investment advisers to determine whether the customer appears on any lists of known or suspected terrorists or terrorist organizations provided by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. This would make it more difficult for persons to use false identities to establish customer relationships with investment advisers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

We have made certain estimates of the burdens associated with the proposed rule solely for the purpose of this PRA analysis. The table below summarizes the initial and ongoing annual burden and cost estimates associated with the proposed rule.

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[120] Proposed 31 CFR 1032.220(a)(2).

[121] Proposed 31 CFR 1032.220(a)(3)(ii).

[122] *See* 44 U.S.C. 3502(3).

[123] The number of RIAs is an estimate of all RIAs with at least one client based on responses to Item 5.D of Form ADV, as of Oct. 5, 2023. The number of ERAs is an estimate of all ERAs with at least one client based on responses to Item 2.B of Form ADV, as of Oct. 5, 2023.

Table 1: PRA Estimates

	Internal initial burden hours	Internal annual burden hours	Wage rate[1]	Internal time costs	Annual external cost burden
PROPOSED RULE ESTIMATES					
(1) CIP Program Burdens (1032.220(a)(1))					
Establishing, documenting, and maintaining a written customer identification program	30 hours[2]	11 hours[3]	$106.30	$1,169.30	$584[4]
Number of ERAs and RIAs		x 20,460[5]		x 20,460	x 15,345[6]
Total new annual aggregate burden (RIAs and ERAs)		225,060 hours		$23,923,878	$8,961,480
(2) CIP Program Burdens (1032.220(a)(2) – (6))					
Obtaining/Verifying identity of customer		1 hour[7]	$106.30	$106.30	$23.36[8]
Recordkeeping for each customer		0.50 hours[7]	$106.30	$53.15	$0
Comparing each customer with government lists		0.8 hours[7]	$106.30	$85.04	$0
Providing notice to each customer		0.08 hours[7]	$106.30	$8.50	$11.68[9]
Total new annual burden for an adviser with respect to each customer[10]		2.38 hours		$252.99	$35.04
Exempt Reporting Advisers (ERAs)					
Median number of customers per ERA		x 2		x 2	x 2
Number of ERAs		x 5,546[11]		x 5,546	4,159.5[12]
Total new annual aggregate burden for ERAs[13]		26,398.96 hours		$2,806,209.45	$291,497.76
Registered Investment Advisers (RIAs)					
Median number of customers per RIA		x 100		x 100	x 100
Number of RIAs		x 14,914[14]		x 14,914	11,185.5[15]
Total new annual aggregate burden for RIAs[16]		3,549,532. hours		$377,315,251,60	$39,193,992.00
(3) Totals					
Total new annual aggregate burden (RIAs)		3,713,586.00 hours		$394,754,191.80	$45,726,324.00
Total new annual aggregate burden (ERAs)		87,404.96 hours		$9,291,147.25	$2,720,645.76
Total new annual aggregate burden (RIAs and ERAs)		3,800,990.96 hours		$404,045,339.05	$48,446,969.76

Notes:

1. The wage rate applied here is a general composite hourly wage ($74.86), scaled by a private-sector benefits factor of 1.42 ($106.30 = $74.86 x 1.42), that incorporates the mean wage data (available for download at https://www.bls.gov/oes/tables.htm, "May 2022 - National industry-specific and by ownership") associated with the six occupational codes (11-1010: Chief Executives; 11-3021: Computer and Information Systems Managers; 11-3031: Financial Managers; 13-1041: Compliance Officers; 23-1010: Lawyers and Judicial Law Clerks; 43-3099: Financial Clerks, All Other) for each of the nine groupings of NAICS industry codes that FinCEN determined are most directly comparable to its eleven categories of covered financial institutions as delineated in 31 CFR parts 1020 to 1030. The benefit factor is 1 plus the benefit/wages ratio, where as of Dec. 2023, Total Benefits = 29.6 and Wages and salaries = 70.4 (29.6/70.4= 0.42) based on the private industry workers series data downloaded from https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx, accessed Mar. 22, 2024. Given that many occupations provide benefits beyond cash wages (e.g., insurance, paid leave, etc.), the private sector benefit is applied to reflect the total cost to the employer.

This approach is generally consistent with the PRA wage rate calculations for the customer identification program rules for other financial institutions under the BSA. We believe that using these wage rates, rather than other wages rates (such as the wage rates compiled in the SIFMA Wage Report (as defined below)), is appropriate given the similarity between this proposed rule (and its associated burdens) and those rules (and their respective associated burdens). It also reflects the importance that we assign to the harmonization of CIP requirements.

2. All estimates included herein are based on an average. Some firms may have a lower burden in the case they will be evaluating existing CIP programs, while other firms may be creating new CIP programs altogether and thus may have higher burdens. Estimates are based on staff experience and various sources.

3. Includes initial burden estimates annualized over a three-year period, plus 1 ongoing annual burden hours. The estimate of 11 hours is based on the following calculation: ((30 initial hours /3) + 1 additional ongoing burden hour) = 11 hours.

4. This estimated burden is based on the estimated wage rate of $584/hour, for 1 hour, for outside legal services. The hourly rate estimate for outside legal services is based on information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff for 2023 ("SIFMA Wage Report"). The estimated figures from the SIFMA Wage Report are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. We believe that it is appropriate to use the legal services hourly rate estimate from the SIFMA Wage Report ($584) (the "SIFMA Outside Legal Services Wage Rate), rather than the general composite wage rate referenced in endnote 1 above ($106.30) (the "BLS Composite Wage Rate"), because the SIFMA Outside Legal Services Wage Rate is tailored to the specific type of service provider expected to be engaged by advisers (*i.e.*, external lawyers), whereas the BLS Composite Rate is not tailored in a similar manner and reflects a broader group of occupations. Further, we believe the SIFMA Outside Legal Services Wage Rate provides a more accurate burden estimate than the Bureau of Labor Statistics' wage rate for Lawyers and Judicial Law Clerks (Code 43-3099) because the SIFMA Outside Legal Services Wage Rate is specific to external lawyers. We request comment on whether this approach is reasonable in section [C] below, including whether there are other wage rate estimates that we should use.

5. This number is an estimate of the sum of all exempt reporting advisers with at least one client (5,546) based on responses to Item 2.B of Form ADV and all registered investment advisers with at least one client (14,914) based on responses to Item 5.D of Form ADV, in each case, as of October 5, 2023.

6. We estimate that 75% of investment advisers will use outside legal services for these collections of information. This estimate takes into account that investment advisers may elect to use these outside services (along with in-house counsel), based on factors such as investment adviser budget and the investment adviser's standard practices for using such outside services, as well as personnel availability and expertise.

7. Estimates are based on staff experience and take into consideration the burden to implement the CIP requirements.

8. This estimated burden is based on the estimated wage rate of $584/hour, for 0.04 hours, for outside legal services. The Commission's estimates of the rates for outside legal services take into account adjustments for inflation. See endnote 4 above.

9. This estimated burden is based on the estimated wage rate of $584/hour, for 0.02 hours, for outside legal services. The Commission's estimates of the rates for outside legal services take into account adjustments for inflation. See endnote 4 above.

10. Estimates herein assume that (i) the median number of customers per exempt reporting adviser is two and (ii) the median number of customers per registered investment adviser is 100. For purposes of the number of "customers" with respect to exempt reporting advisers, we used the number of private funds reported by exempt reporting advisers on Schedule D, Section 7.B.1 of Form ADV, as of October 5, 2023. For purposes of the number of "customers" with respect to registered advisers, we used the number of "clients" reported by advisers on Item 5.D of Form ADV, as of October 5, 2023. This estimate is based on the median number of clients per registered investment adviser with at least one client. "Customers" does not include the investors in a private fund. This figure is an overestimate because Form ADV does not allow us to separate advisers to only open-end investment companies, which generally would be exempted from this proposed rule under section 220(a)(1), from advisers to closed-end investment companies, which would be included (since an investment adviser may deem the requirements satisfied for any mutual fund (as defined in 31 CFR 1010.100(gg)) it advises that has developed and implemented a CIP compliant with the CIP requirements applicable to mutual funds)). *See supra* note 67 and accompanying text.

11. This number is an estimate of all exempt reporting advisers with at least one client based on responses to Item 2.B of Form ADV, as of October 5, 2023.

12. We estimate that 75% of ERAs will use outside legal services for these collections of information. This estimate takes into account that ERAs may elect to use these outside services (along with in-house counsel), based on factors such as investment adviser budget and the adviser's standard practices for using such outside services, as well as personnel availability and expertise.

13. For this row, each of the total figures was calculated by multiplying the "Total new annual burden for an adviser with respect to a customer" by "Median number of customers per ERA" and then multiplying again by "Number of ERAs."

14. This number is an estimate of all registered investment advisers with at least one client based on responses to Item 5.D of Form ADV, as of October 5, 2023. We note that this figure is likely an overestimate because Form ADV does not allow us to separate advisers to open-end investment companies, which generally would be excluded from this proposed rule, from advisers to closed-end investment companies, which would be included.

15. We estimate that 75% of RIAs will use outside legal services for these collections of information. This estimate takes into account that RIAs may elect to use these outside services (along with in-house counsel), based on factors such as investment adviser budget and the adviser's standard practices for using such outside services, as well as personnel availability and expertise.

16. For this row, each of the total figures was calculated by multiplying the "Total new annual burden for an adviser with respect to a customer" by "Median number of customers per RIA" and then multiplying again by "Number of RIAs."

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C. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), FinCEN and the Commission solicit comments in order to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of FinCEN and the Commission's estimate of the burden of the proposed collection of information, including whether the estimates are too high or too low; whether the median number of clients is an appropriate figure to use; whether certain costs, such as verification costs, should be

lower for certain customers (such as private funds if the adviser forms the private fund) and higher for other types of customers (such as in separately managed account relationships); (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rule should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–2024–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–2024–02, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

VI. Regulatory Flexibility Act

The SEC and FinCEN have prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[124] It relates to the proposed rule that would amend 31 CFR part 1032 and be issued pursuant to section 326 of the USA PATRIOT Act as amended and codified at 31 U.S.C. 5318(*l*).[125]

A. Reason for and Objectives of the Proposed Rule

The reasons for, and objectives of, the proposed rule are discussed in more detail in sections I and II, above. The burdens of these requirements on small advisers are discussed below as well as above in sections IV and V, which discuss the burdens on all advisers subject to the proposed rule. Sections II through V also discuss the professional skills that compliance with the proposed rule would require.

If FinCEN's proposed AML/CFT Program and SAR Proposed Rule[126] is adopted, section 326 of the USA PATRIOT Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for investment advisers regarding the identities of customers when they open an account. The statute also would provide that the regulations issued by Treasury and the Commission must, at a minimum, require investment advisers to implement reasonable procedures for: (1) verification of the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintenance of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determination of whether the person appears on any lists of known or suspected terrorists or terrorist organizations issued by any government agency.[127] The objective of the proposed rule is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The proposed rule seeks to achieve this goal by requiring investment advisers to establish a CIP with procedures that include obtaining identifying information from customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with investment advisers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism. The proposed rule is designed to align the requirements for investment advisers with existing rules for other financial institutions, such as broker-dealers, mutual funds, credit unions, banks, and others, to adopt and implement CIPs.

We are also proposing to revise 31 CFR 1032.100 to provide numerous definitions for purposes of proposed 31 CFR 1032.220. This aspect of the proposed rule has no independent substantive requirements or economic impacts.

B. Legal Basis

The proposed rule is being promulgated pursuant to the BSA, which mandates that FinCEN and the Commission issue a regulation setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the financial institution.[128]

C. Small Entities Subject to the Proposed Rule

The proposed rule would affect investment advisers that are small entities. Under Commission rules, for the purposes of the RFA, an investment adviser generally is a small entity if it: (1) has, and reports on Form ADV, assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year (''small adviser'').[129] The proposed rule would not affect most small advisers, because generally small advisers are registered with one or more state securities authorities and not with the Commission pursuant to section 203A of the Advisers Act. As a result of section 203A, most small advisers are prohibited from registering with the Commission because an investment adviser generally must have more than $25 million of assets under management or be an adviser to a registered investment company.[130] Based on data from the Investment Adviser Registration Depository system (''IARD''), we estimate that as of October 5, 2023, approximately 276 RIAs and 113 ERAs are small entities under the RFA.[131] As discussed above in section

[124] 5 U.S.C. 603(a).

[125] 31 U.S.C. 5318 is part of the BSA.

[126] FinCEN, Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, 89 FR 12108 (proposed Feb. 15, 2024).

[127] 31 U.S.C. 5318*(l).*

[128] 31 U.S.C. 5318(l)(4).

[129] Advisers Act rule 0–7(a) (17 CFR 275.0–7).

[130] 15 U.S.C. 80b–3.

[131] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV. We do not have direct data that indicates how many exempt reporting advisers are small entities under the RFA because exempt reporting advisers are not required to report regulatory assets under management on Form ADV. We estimate that, due to SEC registration thresholds, the only small entity exempt reporting advisers that would be subject to the proposed rule would be those that maintain their principal office and place of business outside the United States. We do not have fulsome direct data indicating which exempt reporting advisers that maintain their principal office and place of business outside the United States are small entities, because although exempt reporting advisers are required to report in Part 1A, Schedule D the gross asset value of each private fund they manage, advisers with their principal office and place of business outside the United States may have additional assets under management other than what they report in Schedule D. Therefore, to estimate how many of the exempt reporting advisers that maintain their principal office and

IV, FinCEN and the Commission estimate that based on IARD data as of October 5, 2023, approximately 14,914 RIAs and approximately 5,546 ERAs, including all of the approximately 276 RIAs and 113 ERAs that are small entities under the RFA, would be subject to the proposed rule.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would impose certain notification and compliance requirements on investment advisers, including those that are small entities. All RIAs and ERAs, including small entity advisers, would be required to comply with the proposed rule's CIP requirements, which are summarized in this IRFA. All of these requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections IV and V and below. The professional skills required to meet these specific burdens are also discussed in sections II through V.

There are different factors that would affect whether a smaller adviser incurs costs relating to these requirements that are higher or lower than the estimates discussed in section V. For example, we would expect that smaller advisers may not already have CIP programs, or they may not already have CIP programs that meet certain of the elements that would be required under the proposed rule. Also, while we would expect larger advisers to incur higher costs related to this proposed rule in absolute terms relative to a smaller adviser, we would expect a smaller adviser to find it more costly, per dollar managed, to comply with the requirements because it would not be able to benefit from a larger adviser's economies of scale.

As discussed above, there are approximately 276 RIAs and 113 ERAs that are small entities, and we estimate that 100 percent of these are subject to the proposed rule. As discussed above in section V, the proposed rule, which would require advisers to, among other things, adopt and implement procedures to verify the identity of any customer, would create a new annual burden of approximately 249 hours per RIA and 15.76 hours per ERA, or 70,504.88 hours in aggregate for small advisers (1,780.88 hours for ERAs and 68,724 hours for RIAs). We therefore would expect the annual monetized aggregate cost to small advisers associated with the proposed rule to be approximately $7,494,668.74 ($7,305,361.20 for RIAs and $189,307.54 for ERAs).[132]

E. Duplicative, Overlapping, or Conflicting Federal Rules

Investment advisers generally do not have obligations under the BSA specifically for customer identification programs.[133] As a result, we have not identified any federal rules that would duplicate, overlap, or conflict with the proposed rule. If FinCEN's proposed AML/CFT Program and SAR Proposed Rule [134] is adopted, section 326 of the USA PATRIOT Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for investment advisers regarding the identities of customers when they open an account. This congressional directive cannot be followed absent the issuance of a new rule.

F. Significant Alternatives

The RFA directs FinCEN and the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic effect on small entities. We considered the following alternatives for small entities in relation to the proposed rule: (1) exempting advisers that are small entities from all or part of the proposed rule; (2) establishing different requirements, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the proposed rule for small entities; and (4) using design rather than performance standards.

Regarding the first and second alternatives, FinCEN and the SEC currently believe that establishing different requirements for small advisers, or exempting small advisers from the proposed rule, or any part thereof, would likely be inappropriate under these circumstances. Moreover, FinCEN and the Commission do not believe that those alternatives are appropriate given the flexibility built into the rule to account for, among other things, the differing sizes and resources of advisers, as well as the importance of the statutory goals and mandate of section 326. As discussed above, implementation of CIPs and reasonable procedures related thereto under this proposed rule is intended to assist in preventing, detecting, and prosecuting money laundering and the financing of terrorism by specifying the information investment advisers must obtain from or about customers that can be used to verify the identity of the customers. We assess that this proposed rule would make it more difficult for persons to use false identities to establish customer relationships with investment advisers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism. Establishing different conditions for large and small advisers even though advisers of every type and size must open accounts for customers would negate these benefits.

Regarding the third alternative, we believe the rule as proposed is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above, the proposed rule would require advisers to, among other things, adopt and implement procedures to verify the identity of any customer, to the extent reasonable and practicable; maintain and retain records of the information used to verify the customer's identity; and determine whether the customer appears on any lists of known or suspected terrorists or terrorist organizations provided by any Federal government agency.[135] The proposed rule would serve as an explicit requirement for firms to adopt and implement a comprehensive CIP.

Regarding the fourth alternative, we determined to use performance standards rather than design standards. Performance standards allow for increased flexibility in the methods firms can use to achieve the objectives of the requirements. Design standards

place of business outside the United States could be small entities, we use a calculation from a comparable data set: SEC-registered investment advisers. According to Form ADV data as of Oct. 5, 2023, there are 48 small entity SEC-registered investment advisers with their principal office and place of business outside the United States and 797 total registered investment advisers with their principal office and place of business outside the United States (48 divided by 797 = 6%). There are approximately 1,868 exempt reporting advisers with their principal office and place of business outside the U.S. As a result, we estimate that the same percentage (6%) of those advisers are small entities, which equals approximately 113 exempt reporting advisers.

[132] Internal time costs calculated as follows: 68,724 hours for RIAs × $106.30 plus 1,780.88 hours for ERAs × $106.30. The estimated annual external cost burden for small advisers would be: $1,502,567.76, assuming 75% of these advisers will use outside legal services for these collections of information.

[133] As mentioned above, investment advisers that are banks (or bank subsidiaries) subject to the jurisdiction of the FFIRAs are subject to applicable FBA regulations imposing AML/CFT requirements on banks. See, *e.g.,* 12 CFR 5.34(e)(3) and 5.38(e)(3) (OCC requirements governing operating subsidiaries of national banks and Federal savings associations).

[134] FinCEN, *Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting* Advisers, 89 FR 12108 (proposed Feb. 15, 2024).

[135] *See* proposed 31 CFR 1032.220. *See also supra* section II.

specify the behavior or manner of compliance that regulated entities must adopt. Although the proposed rule would require policies and procedures that are reasonably designed to address a certain number of elements, we do not place certain conditions or restrictions on how to adopt and implement such policies and procedures. The general elements are designed to enumerate core areas that advisers must address when adopting and implementing a CIP. As discussed above, given the number and varying characteristics of advisers, firms would need the ability to design their CIPs in a manner appropriate for their size and business. The proposed rule therefore would allow advisers to address the general elements based on the types of accounts they maintain, the various methods of opening accounts, and the types of identifying information that are available. The proposed rule would also provide flexibility for advisers to determine the personnel who would implement and oversee the effectiveness of their CIPs.

G. Solicitation of Comments

FinCEN and the Commission encourage written comments on the matters discussed in this IRFA. We solicit comment on the number of small entities subject to the proposed rule. We also solicit comment on the potential effects discussed in this analysis; and whether this proposal could have an effect on small entities that has not been considered. We request that commenters describe the nature of any effect on small entities and provide empirical data to support the extent of such effect.

VII. Considerations of the Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [136] we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment, or innovation. We request comment on whether this proposal would be a ''major rule'' for purposes of the SBREFA. We also request comment on the potential effect of the proposed rule on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. FinCEN's Regulatory Impact Analysis

Executive Orders 12866, 13563, and 14094 (that is, E.O. 12866 and its amendments) 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, and public health and safety effects; distributive impacts; and equity).[137] E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 13563 also recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify.[138]

FinCEN has designated this proposed rule a ''significant regulatory action;'' accordingly, it has been reviewed by the Office of Management and Budget (''OMB'').

FinCEN believes that the primary costs of complying with the proposed rule are considered in the Analysis of the Costs and Benefits Associated with the Proposed Rule described in detail in section IV and the Paperwork Reduction Act (44 U.S.C. 3507(d)) burden estimates described in detail in section V, which amount to a new annual aggregate burden (RIAs and ERAs) of 3,800,990 hours with $404,045,339.05 in internal time costs, and $48,446,969.76 in estimated total new annual external cost burden.

As discussed above in sections IV and V, benefits of this proposed rule are expected to include reduced money laundering and terrorist financing occurring through the U.S. financial system. Overall, the proposed rule would benefit law enforcement by improving their ability to investigate, prosecute and disrupt the financing of international terrorism and other priority transnational security threats, as well as other types of transnational financial crime. Obtaining and verifying the identity of account holders or responding to circumstances in which the investment adviser cannot form a reasonable belief that it knows the true identity of a customer would reduce the risk of terrorists and other criminals accessing U.S. financial markets to launder money, finance terrorism, or move funds for other illicit purposes. The proposed rule would also help investment advisers to identify and prevent criminal activity including by allowing investment advisers to identify high risk customers. While it is difficult to estimate the economic losses that would be prevented by reducing money laundering and other financial crimes through this rule, the prevention of such crimes would reduce the monetary and nonmonetary harms they cause.

As an alternative to the proposed rule, as discussed in section IV, FinCEN considered requiring investment advisers use the LEI or some other uniform standard as the identifier for such customers. While using the LEI would assist investment advisers and law enforcement agencies to detect money laundering than using a number of identifiers, the proposed rule's application to direct customers rather than beneficial owners limits the benefit of using LEIs. Further, natural persons could not use this identifier, meaning compliance with the proposed rule would require the collection of different types of identifiers.

Regarding costs, as noted above in sections IV and V, in accordance with section 326 of the USA PATRIOT ACT, the proposed rule would require an investment adviser to establish and implement its CIP according to its specific circumstances and do not set inflexible requirements for all advisers. Further, the proposed requirements are similar to those for other financial institutions with which investment advisers engage; complying with the proposed rule may therefore create minimal additional costs in certain lines of business. Some RIAs and ERAs may have reduced costs because they may already perform certain AML/CFT functions because they are dual registrants or affiliated with a bank or broker-dealer. Finally, per the analysis above in sections IV and V, investment advisers may deem the requirements of the proposed rule with respect to its business relationship with a mutual fund to be satisfied if the customer (*i.e.,* the mutual fund that it advises) has developed and implemented a CIP that is compliant with the investment company's CIP requirements.

[136] Public Law 104–121, tit. II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[137] The SEC was not required to perform a regulatory impact analysis.

[138] Executive Order 13563, 76 FR 3821 (Jan. 21, 2011), section 1(c) (''Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity human dignity, fairness, and distributive impacts, and distributive impacts.'').

The costs incurred by the proposed rule would arise through the following requirements: establishing a CIP; obtaining and verifying identifying information; determining whether customers appear on a federal government list; providing notice to customers; recordkeeping; and reliance on another financial institution. Overall, FinCEN estimates that the average total cost to an ERA with two customers to comply with the proposed rules would be an internal cost burden of $1,675, with most ERAs facing total annual ongoing external costs of $654, while the average total internal cost for an RIA with 100 customers would be $26,468, with most RIAs facing total ongoing annual external cost burdens of $4,088.

Given the analysis included in the preceding sections, FinCEN believes that the benefits of this rule would exceed the costs.

IX. FinCEN's Unfunded Mandates Reform Act Determination

FinCEN has analyzed the rule under the factors set forth in the Unfunded Mandates Reform Act (''UMRA'') (section 202(a)). Under this analysis, FinCEN considered whether the proposed rule includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' [139] The current threshold after adjustment for inflation is $176 million, using the 2022 GDP price deflator. The proposed rule would result in an expenditure in at least one year that meets or exceeds this amount.

FinCEN further estimates total aggregate industry costs of: $404,045,339.05 in internal time costs and $48,446,969.76 in annual external time costs.[140] The proposed rule does not foreseeably impose costs or other compliance burden that would impact any State, local, or Tribal government. FinCEN believes that the cost benefit analysis in section IV. Analysis of the Costs and Benefits Associated with the Proposed Rule, provides the analysis required by UMRA.

Authority and Issuance

For the reasons set forth in the preamble, FinCEN and the SEC propose to add part 1032 to chapter X in title 31 of the Code of Federal Regulations to read as follows:

[139] 2 U.S.C. 1532(a).

[140] *See* the PRA analysis in Table 1, *infra* section V.B.

PART 1032—RULES FOR INVESTMENT ADVISERS

Subpart A—General

Sec.
1032.100 Definitions
1032.101–1032.199 [Reserved]

Subpart B—Programs

1032.220 Customer identification programs for registered investment advisers and exempt reporting advisers.

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

Subpart A—General

§ 1032.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100, the definition in this section is what applies to part 1032. Unless otherwise indicated, for purposes of this part:

(a) *Account.* For purposes of § 1032.220:

(1) Account means any contractual or other business relationship between a person and an investment adviser under which the investment adviser provides investment advisory services.

(2) *Account* does not include:

(i) An account that the investment adviser acquires through any acquisition, merger, purchase of assets, or assumption of liabilities.

(ii) [Reserved]

(b) *Commission* means the United States Securities and Exchange Commission.

(c) *Customer.* For purposes of § 1032.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in § 1020.315(b)(2) through (4) of this chapter; or

(iii) A person that has an existing account with the investment adviser, provided the investment adviser has a reasonable belief that it knows the true identity of the person.

(d) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1) and its implementing regulation in Chapter X of Title 31.

(e) *Investment adviser.* Any person who is registered or required to register with the Commission under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)), or any person that is exempt from Commission registration under sections 203(l) or 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(*l*), (m)).

Subpart B—Programs

§ 1032.220 Customer identification programs for registered investment advisers and exempt reporting advisers.

(a) *Customer identification program: minimum requirements*—(1) *In general.* An investment adviser must establish, document, and maintain a written customer identification program (''CIP'') appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the investment adviser's anti-money laundering/countering the financing of terrorism compliance program required under the regulations implementing 31 U.S.C. 5318(h). The investment adviser may deem these requirements satisfied for any mutual fund (as defined in 31 CFR 1010.100(gg)) it advises that has developed and implemented a CIP compliant with the CIP requirements applicable to mutual funds under another provision of this subpart.

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the investment adviser to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the investment adviser's assessment of the relevant risks, including those presented by the various types of accounts maintained by the investment adviser, the various methods of opening accounts provided by the investment adviser, the various types of identifying information available and the investment adviser's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraphs (a)(2)(i)(B) and (C) of this section, the investment adviser must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual; or date of formation, for a person that is not an individual.

(*3*) Address, which shall be

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. For a non-U.S. person that is not an individual and that does not have an identification number, the investment adviser must request alternative government-issued documentation certifying the existence of the person.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the investment adviser will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For an investment adviser relying on documents, the CIP must contain procedures that set forth the documents the investment adviser will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents and any amendments thereto showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For an investment adviser relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the investment adviser will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided with respect to the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The investment adviser's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the investment adviser is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without meeting in person; and the investment adviser is otherwise presented with circumstances that increase the risk that the investment adviser will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the investment adviser's risk assessment of a new account opened by a customer that is not an individual, the investment adviser will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the investment adviser cannot verify the true identity of a customer that is not an individual using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the investment adviser cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the investment adviser should not open an account;

(B) The terms under which the investment adviser may provide advisory services to the customer while the investment adviser attempts to verify the customer's identity;

(C) When the investment adviser should close an account after attempts to verify a customer's identity fail; and

(D) When the investment adviser should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section,

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section, noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The investment adviser must retain the records made under paragraph (a)(3)(i)(A) of this section for 5 years after the date the account is closed and the records made under paragraphs (a)(3)(i)(B), (C), and (D) of this section for 5 years after the record is made.

(4) *Comparison with government lists.* The CIP must include reasonable procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal Government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the investment adviser to make such a determination within a reasonable period of time after the account is opened, or earlier if

required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the investment adviser to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the investment adviser is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the investment adviser generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a prospective customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, an investment adviser may post a notice on its website, include the notice in its account applications, or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, an investment adviser may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each natural or legal person who opens an account, which may be an individual or a person other than an individual (such as a corporation, partnership, or trust).

What this means for you: When you open an account, we will ask for the name, address, date of birth or formation, tax identification number, and other information pertaining to the accountholder. This information will help us verify the identity of the accountholder. We may also ask to see identifying documents pertaining to the accountholder, such as a driver's license (if you are an individual) or a business license, articles of incorporation, or trust instrument (if the accountholder is not an individual).

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the investment adviser will rely on the performance by another financial institution (including an affiliate) of any procedures of the investment adviser's CIP with respect to any customer of the investment adviser that is opening, or has opened, an account or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract with the investment adviser requiring it to certify annually to the investment adviser that it has implemented its anti-money laundering/countering the financing of terrorism program, and that it will perform (or its agent will perform) specified requirements of the investment adviser's CIP.

(b) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any investment adviser or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any investment adviser or any type of account from the requirements of this section. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(c) *Effective date.* The effective date is [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. An investment adviser must develop and implement a CIP that complies with the requirements of this section on or before [DATE 6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE].

(d) *Other requirements unaffected.* Nothing in this section relieves an investment adviser of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: May 10, 2024.

By the Financial Crimes Enforcement Network.

Andrea M. Gacki,

Director.

Dated: May 13, 2024.

By the Securities and Exchange Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–10738 Filed 5–17–24; 11:15 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1362; A.G. Order No. 5931–2024]

Schedules of Controlled Substances: Rescheduling of Marijuana

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (''DOJ'') proposes to transfer marijuana from schedule I of the Controlled Substances Act (''CSA'') to schedule III of the CSA, consistent with the view of the Department of Health and Human Services (''HHS'') that marijuana has a currently accepted medical use as well as HHS's views about marijuana's abuse potential and level of physical or psychological dependence. The CSA requires that such actions be made through formal rulemaking on the record after opportunity for a hearing. If the transfer to schedule III is finalized, the regulatory controls applicable to schedule III controlled substances would apply, as appropriate, along with existing marijuana-specific requirements and any additional controls that might be implemented, including those that might be implemented to meet U.S. treaty obligations. If marijuana is transferred into schedule III, the manufacture, distribution, dispensing, and possession of marijuana would remain subject to the applicable criminal prohibitions of the CSA. Any drugs containing a substance within the CSA's definition of ''marijuana'' would also remain subject to the applicable prohibitions in the Federal Food, Drug, and Cosmetic Act (''FDCA''). DOJ is soliciting comments on this proposal.

DATES: Comments must be submitted electronically or postmarked on or before July 22, 2024. Interested persons may file a request for a hearing or waiver of an opportunity for a hearing or to participate in a hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.47 or 1316.49, as applicable, which must be received or postmarked on or before June 20, 2024.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–1362'' on all correspondence, including any attachments.

- *Electronic comments:* DOJ encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly

into the comment field on the web page or to attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of submitting a comment electronically, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for a hearing and waivers, together with a written statement of position on the matters of fact and law asserted in the hearing, must be filed with DEA. Such requests must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. For informational purposes, a courtesy copy of requests for hearing and waivers should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Drug & Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249; Email: *nprm@dea.gov.*

SUPPLEMENTARY INFORMATION: To be considered as part of this rulemaking, comments and requests for a hearing must be submitted in response to this proposed rule within the timeframe specified above, regardless of whether the comment, hearing request, or other information was previously submitted to the Drug Enforcement Administration (''DEA'') in connection with any prior matter relating to the scheduling of marijuana.

I. Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. DOJ will make comments available for public inspection online at *https://www.regulations.gov.* Such information includes personal or business identifiers (such as name, address, State or Federal identifiers, etc.) voluntarily submitted by the commenter. Generally, all information voluntarily submitted by the commenter, unless clearly marked as ''Confidential Information'' in the method described below, will be publicly posted. Comments may be submitted anonymously. The Freedom of Information Act, 5 U.S.C. 552, applies to all comments received.

Commenters submitting comments that include personal identifying information (''PII'') or confidential or proprietary business information that the commenter does not want made publicly available should submit two copies of the comment. One copy must be marked ''CONTAINS CONFIDENTIAL INFORMATION'' and should clearly identify all PII or business information the commenter does not want to be made publicly available, including any supplemental materials. DOJ will review this copy, including the claimed PII and confidential business information, in its consideration of comments. The second copy should be marked ''TO BE PUBLICLY POSTED'' and must have all claimed confidential PII and business information already redacted. DOJ will post only the version of the comment with redactions on *https://www.regulations.gov* for public inspection.

An electronic copy of this document and supplemental information to this proposed rule are available at *https://www.regulations.gov* for easy reference. DOJ specifically solicits written comments regarding the economic analysis of the impact of these proposed changes. DOJ requests that commenters provide detailed descriptions in their comments of any expected economic impacts, especially to small entities. Commenters should provide empirical data to illustrate the nature and scope of such impact.

II. Request for Hearing, Notice of Appearance at, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this scheduling action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the Administrative Procedure Act (''APA''), 5 U.S.C. 551–559. *See* 21 CFR 1308.41 through 1308.45; *id* part 1316, subpart D. Interested persons, as defined in 21 CFR 1300.01(b), may file requests for a hearing in conformity with the requirements of 21 CFR 1308.44(a) and 1316.47(a), and such requests must:

(1) state with particularity the interest of the person in the proceeding;

(2) state with particularity the objections or issues concerning which the person desires to be heard; and

(3) state briefly the position of the person regarding the objections or issues.

All requests for a hearing and waivers of an opportunity for a hearing or participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above.

The decision whether an in-person hearing will be needed to address such matters of fact and law in the rulemaking will be made by the Administrator of DEA. Upon the Administrator's determination to grant an in-person hearing, DEA will publish a notice of hearing on the proposed rulemaking in the **Federal Register**. *See* 21 CFR 1308.44(b), 1316.53.

If the Administrator determines to grant an in-person hearing to address such matters of fact and law in this rulemaking, the Administrator will then designate an Administrative Law Judge (''ALJ'') to preside over the hearing. The ALJ's functions shall commence upon designation, as provided in 21 CFR 1316.52. The ALJ will have all powers necessary to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. *Id.* The ALJ's authorities include the power to hold conferences to simplify or determine the issues in the hearing or to consider other matters that may aid in the expeditious disposition of the hearing; require parties to state their position in writing; sign and issue subpoenas to compel the production of documents and materials to the extent necessary to conduct the hearing; examine witnesses and direct witnesses to testify; receive, rule on, exclude, or limit evidence; rule on procedural items; and take any action permitted by the presiding officer under DEA's hearing procedures and the APA. *Id.*

Comments on or objections to the proposed rule submitted under 21 CFR 1308.43(g) will be offered as evidence at the hearing, but the presiding officer shall admit only evidence that is competent, relevant, material, and not unduly repetitive. 21 CFR 1316.59(a).

Any interested person may file a waiver of opportunity for a hearing or to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(c), together with a written statement of position on the matters of fact and law involved in any hearing. 21 CFR 1316.49. Such statement, if admissible, will be included in the record and considered as described in 21 CFR 1308.44(c).

In accordance with 21 U.S.C. 811 and 812, the purpose of a hearing would be to ''receiv[e] factual evidence and expert opinion regarding'' whether marijuana should be transferred to schedule III of the list of controlled substances. 21 CFR 1308.42. Concurrent with this rulemaking, DEA will consider the marijuana-specific controls that would be necessary to comply with relevant treaty obligations in the event that, after the hearing, a final order reschedules marijuana, and, to the extent such controls are needed if marijuana is rescheduled, will seek to finalize any such regulations as soon as possible.

All requests for hearing and waivers of an opportunity for a hearing or participation must be sent to DEA using the address information above, on or before the date specified above.

III. Legal Authority

Under the CSA, 21 U.S.C. 801 *et seq.,* the Attorney General shall, before initiating proceedings to control, decontrol, or transfer between schedules a drug or other substance, request from the Secretary of HHS a scientific and medical evaluation, and the Secretary's recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. 21 U.S.C. 811(b). The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. *Id.*

HHS recommended in August 2023 that marijuana be rescheduled to schedule III. *See* Letter for Anne Milgram, Administrator, DEA, from Rachel L. Levine, M.D., Assistant Secretary for Health, HHS (Aug. 29, 2023) (''August 2023 Letter''). The Attorney General then sought the legal advice of the Office of Legal Counsel (''OLC'') at DOJ on questions relevant to this rulemaking proceeding. Among other conclusions, OLC concluded that ''HHS's scientific and medical determinations must be binding until issuance of a notice of proposed rulemaking [('NPRM')].'' *Questions Related to the Potential Rescheduling of Marijuana,* 45 Op. O.L.C. ____, at *25 (Apr. 11, 2024) (''OLC Op.'').[1] After the issuance of a notice of rulemaking proceedings, HHS's scientific and medical determinations are accorded ''significant deference'' through the rest of the rulemaking process.[2] OLC Op. at *26.

Under the CSA, when recommending or determining that a drug should be controlled (and if so, under which schedule), the Secretary and the Attorney General must consider eight factors set forth in 21 U.S.C. 811(c). The eight factors are:

1. The drug's actual or relative potential for abuse;
2. Scientific evidence of its pharmacological effect, if known;
3. The state of current scientific knowledge regarding the drug or other substance;
4. Its history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. What, if any, risk there is to the public health;
7. Its psychic or physiological dependence liability; and
8. Whether the substance is an immediate precursor of a substance already controlled.

21 U.S.C. 811(c); *see also id.* 811(b) (specifying how HHS should consider each of the eight factors).

The United States is a party to the 1961 United Nations Single Convention on Narcotic Drugs, March 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151 (''Single Convention''), as amended by the 1972 Protocol, March 25, 1972, 26 U.S.T. 1439, 976 U.N.T.S. 3. Under 21 U.S.C. 811(d)(1), if control of a substance is required ''by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970,'' the Attorney General must issue an order controlling such drug ''under the schedule he deems most appropriate to carry out such obligations, without regard to the findings'' required by 21 U.S.C. 811(a) or 812(b), ''and without regard to the procedures'' prescribed by 21 U.S.C. 811(a) and (b). Marijuana is a drug covered by the Single Convention. *See* Single Convention art. 1(1)(b); OLC Op. at *26 & n.7.

OLC and the United States Court of Appeals for the D.C. Circuit have explained that section 811(d)(1) does not supersede the scheduling procedures set forth in sections 811(a) through (b) and 812(b), including the requirement to consider the eight factors set forth in section 811(c). Instead, section 811(d)(1) allows the Attorney General to ''identify which schedules would satisfy the United States' international obligations with respect to a particular drug, and then—if more than one schedule would do so—select which schedule to use through the section 811(a) through (b) and 812(b) procedures.'' OLC Op. at *29 n.8; *accord Nat'l Org. for Reform of Marijuana Laws (NORML II)* v. *DEA,* 559 F.2d 735, 747 (D.C. Cir. 1977). HHS performed the eight-factor analysis. *See* Memorandum for DEA, from HHS, *Re:* Basis for the Recommendation to Reschedule Marijuana to Schedule III of the Controlled Substances Act (''HHS Basis for Rec.''). As noted above, HHS's scientific and medical determinations are binding on DOJ until an NPRM is published, and, in addition, DOJ must accord ''significant deference'' to HHS's scientific and medical determinations throughout the rulemaking process. OLC Op. at *25–26.

Once the determination is made that a particular drug or substance must be controlled under the CSA, the Attorney General must determine the level of control over the drug or substance under the CSA. *See* 21 U.S.C. 811(a), (b). The CSA divides controlled substances into five levels of control, or ''schedules,'' based on (1) a drug's potential for abuse, (2) whether the drug has a currently accepted medical use in treatment in the United States (''CAMU''), and (3) whether there is a lack of accepted safety for use of the drug under medical supervision or the level of psychological or physical dependence that could result from abuse of the drug. *See id.* 812(b). Schedule I drugs have a high potential for abuse, no CAMU, and a lack of accepted safety for use under medical supervision. *Id.* 812(b)(1). Schedule II drugs also have a high potential for abuse but have a CAMU (or a CAMU with ''severe restrictions''), and abuse of the drug may lead to severe psychological or physical dependence. *Id.* 812(b)(2). Schedule III drugs, meanwhile, have a lower potential for

[1] OLC's opinion is available in its entirety under ''Supporting and Related Material'' of the public docket for this proposed rule at *https://www.regulations.gov* under docket number DEA–1362.

[2] The CSA's reliance on formal rulemaking for scheduling decisions indicates that HHS's determinations do not bind DOJ for the entirety of the rulemaking process, because outside participants may submit additional scientific and medical evidence during the rulemaking that DOJ would need to consider. OLC Op. at *25. However, DOJ ''may not simply cast aside HHS's scientific and medical recommendations once it initiates rulemaking proceedings by issuing an NPRM,'' since ''[t]he categorical use of the word 'binding' in section 811(b) suggests that Congress intended HHS's scientific and medical views to at least be a very significant input in the scheduling process,'' and the legislative history of the CSA bolsters that conclusion. *Id.* at 25–26 (citing H.R. Rep. No. 91–1444, at 22–23 (1970)).

abuse when compared to drugs in schedules I and II, have a CAMU, and their abuse may lead to moderate or low physical dependence or high psychological dependence.[3] 21 U.S.C. 812(b)(3). The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug is to be placed. The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General on his own motion, at the request of the Secretary, or on the petition of any interested party. *Id.*

IV. Background

When Congress enacted the CSA in 1970, it placed marijuana in schedule I. Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91–513, tit. II, sec. 202(c), 84 Stat. 1236, 1249 (1970); 21 U.S.C. 812(c).[4] The Attorney General is authorized to amend this initial placement. 21 U.S.C. 812(c); *see also id.* 811, 812(b). Other schedule I substances include heroin, lysergic acid diethylamide (commonly known as LSD), and 3,4-methylene dioxymethamphetamine (ecstasy). *See* 21 CFR 1308.11. Drugs controlled under schedule II include cocaine, methamphetamine, methadone, oxycodone, and fentanyl. *Id.* § 1308.12. Drugs controlled under schedule III include products containing less than 90 milligrams of codeine per dosage unit, ketamine, and anabolic steroids. *Id.* § 1308.13. Petitioners have requested that marijuana be rescheduled several times over the years. *See, e.g., Schedule of Controlled Substances: Petition To Remove Marihuana From Control or in the Alternative To Control Marihuana in Schedule V of the Controlled Substances Act,* 37 FR 18097 (Sept. 7, 1972); *Notice of Denial of Petition,* 66 FR 20038 (Apr. 18, 2001); *Denial of Petition To Initiate Proceedings To Reschedule Marijuana,* 76 FR 40552 (July 8, 2011).

DEA and HHS last examined the issue of whether to reschedule marijuana eight years ago, in 2016, when DEA denied two petitions to reschedule marijuana.[5] At the time, HHS concurred that marijuana should remain a schedule I drug because it met the three criteria for placement in schedule I. 81 FR 53706–07. In accordance with the requirements for placement in schedule I, HHS found that: (1) marijuana had a high potential for abuse; (2) it did not have a CAMU; and (3) there was a lack of accepted safety for use of marijuana under medical supervision. *Id.* As discussed in detail below, in 2023, HHS conducted a scientific and medical evaluation of marijuana based on a comprehensive review of available data at that time and recommended that marijuana be transferred to schedule III.

Since 1996, 38 States, the District of Columbia, and 4 Federal Territories have legalized the use of medical marijuana. HHS Basis for Rec. at 30; OLC Op at *9. These laws typically allow the cultivation, sale, and use of marijuana by patients (or their caregivers) whose health care practitioners have recommended that they use marijuana to treat certain health conditions. *See, e.g.,* Ohio Rev. Code secs. 3796.01(A)(6)(a)–(v), 3796.01(A); N.Y. Cannabis Law secs. 3(18), 30, 31; N.M. Stat. secs. 26–2B–3(F)(1)–(23), 26–2B–3(N), 26–2B–4(A). Further, beginning in Fiscal Year 2015, Congress has adopted an appropriations rider every year that prohibits DOJ from using funds to prevent certain States, Territories, and the District of Columbia from implementing their own laws with respect to medical marijuana. *E.g.,* Consolidated Appropriations Act, 2024, Public Law 118–42, sec. 531, 138 Stat. 25; Consolidated Appropriations Act, 2023, Public Law 117–328, sec. 531, 136 Stat. 4459, 4561 (2022); *see also* Cong. Research Serv., R44782, *The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap* 26 & n.159 (updated Apr. 7, 2022) (collecting additional appropriations riders).

Marijuana is generally defined by statute to mean ''the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.'' 21 U.S.C. 802(16)(A). In 2018, Congress amended the CSA to remove ''(i) hemp, as defined in section [1639*o* of title 7 of the U.S. Code]'' from the definition of marijuana.[6] Agricultural Improvement Act of 2018, Public Law 115–334, sec. 12619, 132 Stat. 4490, 5018. Section 1639*o*(1) of title 7 in turn defines hemp as ''the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.'' Delta-9-tetrahydrocannabinol (''Δ9-THC'') is the major psychoactive intoxicating cannabinoid in marijuana. *See* HHS Basis for Rec. at 10. This exclusion of hemp from the definition of marijuana had the effect of removing many products containing predominantly cannabidiol (''CBD'') derived from hemp and containing no more than 0.3 percent Δ9-THC on a dry weight basis from control as marijuana.

On October 6, 2022, President Biden requested that the Attorney General and the Secretary of HHS ''initiate the administrative process to review expeditiously how marijuana is scheduled under federal law.''[7] HHS thereafter undertook a scientific and medical evaluation of marijuana as defined under the CSA in accordance with the President's request.

In a letter dated August 29, 2023, Admiral Rachel L. Levine, M.D., HHS's Assistant Secretary for Health, recommended to the Administrator of DEA that marijuana be controlled in schedule III of the CSA. August 2023 Letter. HHS found that marijuana has a potential for abuse less than the drugs or other substances in schedules I and II; that marijuana has a CAMU; and that the abuse of marijuana may lead to moderate or low physical dependence or high psychological dependence. HHS

[3] Schedule IV includes drugs that have a low potential for abuse relative to those in schedule III, that have a CAMU, and for which abuse may lead to limited physical or psychological dependence relative to those in schedule III. 21 U.S.C. 812(b)(4). Schedule V includes drugs that have a low potential for abuse relative to those in schedule IV, that have a CAMU, and for which abuse may lead to limited physical or psychological dependence relative to those in schedule IV. *Id.* 812(b)(5).

[4] The CSA refers to the drug as ''marijuana'' and ''marihuana'' interchangeably. *See, e.g.,* 21 U.S.C. 802(16)(A), 812(c). As used in this NPRM, ''marijuana'' means the term defined at 21 U.S.C. 802(16).

[5] *Denial of Petition To Initiate Proceedings To Reschedule Marijuana,* 81 FR 53688 (Aug. 12, 2016); *Denial of Petition To Initiate Proceedings To Reschedule Marijuana,* 81 FR 53767 (Aug. 12, 2016).

[6] Marijuana under the CSA also does not include ''the mature stalks of [the cannabis] plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of [the cannabis] plant which is incapable of germination.'' 21 U.S.C. 802(16)(B)(ii).

[7] The White House, *Statement from President Biden on Marijuana Reform* (Oct. 6, 2022), *https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/.*

Basis for Rec. at 62–65. These findings correspond to the criteria for placement of a substance in schedule III. *See* 21 U.S.C. 812(b)(3). DEA has not yet made a determination as to its views of the appropriate schedule for marijuana.

V. Proposal To Reschedule Marijuana

The CSA vests the Attorney General with the authority to schedule, reschedule, or decontrol drugs. 21 U.S.C. 811(a). The Attorney General has delegated that authority to the DEA Administrator, *see* 28 CFR 0.100, but also retains the authority to schedule drugs under the CSA in the first instance, *see* 28 U.S.C. 509, 510. The HHS Assistant Secretary for Health has provided a recommendation for transferring marijuana to schedule III. In light of that recommendation, the Attorney General is exercising the Attorney General's authority under 21 U.S.C. 811(a) to initiate a rulemaking that proposes the placement of marijuana in schedule III.

DEA believes that additional information arising from this rulemaking will further inform the findings regarding the appropriate schedule for marijuana. DEA has maintained an active review of the scientific literature addressing marijuana with a focus on how it relates to the scientific and medical evaluation and informs any updates to the eight-factor analysis. In addition to HHS's scientific and medical determinations, which are binding until the issuance of this NPRM and which must be accorded significant deference throughout the rulemaking, DEA believes that factual evidence (including scientific data) and expert opinions, including additional data regarding different forms, formulations, and delivery methods for marijuana, as well as evidence regarding the effects of marijuana at various dosages or concentrations, may be relevant.

The HHS Basis for Recommendation, DEA's analyses explaining its decisions to deny the petitions to reschedule marijuana in 2016, and the 2024 OLC opinion (cited throughout) are available in their entirety under ''Supporting and Related Material'' of the public docket for this proposed rule at *https://www.regulations.gov* under docket number DEA–1362.

VI. Eight-Factor Analysis

DOJ has reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS and has conducted a separate review of the eight factors identified in 21 U.S.C. 811(c). At this point in the proceedings, DOJ must treat HHS's scientific and medical determinations as binding. *See* OLC Op. at *4, *25. HHS's scientific and medical determinations are included below, as well as certain information from DEA.

1. Marijuana's Actual or Relative Potential for Abuse

The first factor that DOJ and HHS must consider under 21 U.S.C. 811(c) is the actual or relative potential for abuse of marijuana. The term ''abuse'' is not defined in the CSA. However, consistent with the legislative history of the CSA, DEA and HHS have typically weighed the following factors in determining whether a particular drug or substance has a potential for abuse: [8]

A. Whether there is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community.

As part of its analysis, HHS concluded that evidence shows that, although some individuals are taking marijuana in amounts sufficient to create a hazard to their health and to the safety of other individuals and the community, the vast majority of individuals who use marijuana are doing so in a manner that does not lead to dangerous outcomes to themselves or others. HHS Basis for Rec. at 6–7. The data supportive of this conclusion are discussed in detail in HHS's analysis of Factors 4, 5, and 6. *See* HHS Basis for Rec. at 28–57.

In particular, HHS emphasized that an evaluation of various epidemiological databases of adverse outcomes from 2015 to 2021 involving marijuana or comparator drugs that are used nonmedically showed that the utilization-adjusted rate of adverse outcomes involving marijuana was consistently lower than the utilization-adjusted rates of adverse outcomes involving heroin, cocaine, and, for certain outcomes, other comparators, including alcohol. Also, alcohol or heroin typically ranked first or in immediately subsequent positions among the comparators in terms of incidence of adverse outcomes, with marijuana in a lower place in that ranking. This pattern also was observed for serious medical outcomes, including death, observed in Poison Center data, where marijuana was in the lowest ranking group. This suggests consistency across databases, across drugs, and over time. HHS thus concluded that although abuse of marijuana produces clear evidence of harmful consequences, these appear to be relatively less common and less severe than the consequences of some other comparator substances. HHS Basis for Rec. at 7–8.

Importantly, these comparisons of the prevalence of adverse outcomes were from descriptive analyses only, following the established practice in previous eight-factor analyses. Thus, differences in outcome frequency and severity, and the ranked order across comparators, may be attributable in part to underlying differences in the populations being compared (*e.g.,* age or pre-existing medical conditions), among other things. Despite these limitations, qualitative synthesis of descriptive analyses is the established practice in previous eight-factor analyses, and HHS determined that it is the most appropriate approach here. HHS Basis for Rec. at 7–8.

HHS also concluded that the public-health risks posed by marijuana are lower compared to those posed by other drugs of abuse (*e.g.,* heroin, oxycodone, cocaine), based on HHS's evaluation of various epidemiological databases for emergency department (''ED'') visits, hospitalizations, unintentional exposures, and most importantly, overdose deaths. The rank order of the comparators in terms of greatest adverse consequences typically ranked heroin, benzodiazepines, and cocaine first or in immediately subsequent positions, with marijuana in a lower place in the ranking, especially when HHS adjusted for utilization. For overdose deaths, marijuana is always in the lowest ranking among comparator drugs. These evaluations demonstrate that there is consistency across databases, across substances, and over time. HHS thus concluded that although abuse of marijuana produces clear evidence of a risk to public health, that risk is relatively lower than that posed by most other comparator drugs. HHS Basis for Rec. at 7–8.

DEA notes that data provided by HHS in its recommendation included a 2023 national survey that tracks drug use trends among 8th-, 10th-, and 12th-grade students, and showed that by 12th grade, 20.2 percent of students reported using marijuana in the past month.[9] DEA also notes that the same study showed that the prevalence of ingesting marijuana by vaping is evidenced by

[8] *See, e.g.,* 81 FR 53740; *see also* HHS Basis for Rec. at 6 (citing Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4566, 4603).

[9] *See* HHS Basis for Rec. at 35 (discussing Richard A. Miech et al., Univ. of Mich. Inst. for Soc. Rsch., *Monitoring the Future: National Survey Results on Drug Use, 1975–2022: Secondary School Students* 71 (2023), *https://monitoringthefuture.org/wp-content/uploads/2022/12/mtf2022.pdf*).

students reporting vaping in the 30 days prior at the following rates: 4.2 percent for 8th graders, 10.3 percent for 10th graders, and 14.8 percent for 12th graders.[10] In 2022, the Substance Abuse and Mental Health Services Administration's (''SAMHSA'') Drug Abuse Warning Network (''DAWN'') reported that 11.9 percent of drug-related ED visits nationwide involved cannabis.[11] The rate of cannabis-related ED visits was highest in these demographic groups: 18 to 25 years old, male, Black or African American, and Not Hispanic or Latino.[12]

In addition to the data considered by the HHS Basis for Recommendation, the data considered by HHS and DEA in their 2015 eight-factor analysis, and the additional data discussed above, DEA anticipates that additional data on seizures of marijuana by law enforcement, cannabis-related ED visits, as well as updated epidemiological survey data since 2022, may be appropriate for consideration.

B. Whether there is significant diversion of the drug or drugs containing such a substance from legitimate drug channels.

HHS found that there is a lack of evidence of significant diversion of marijuana from legitimate drug channels. HHS Basis for Rec. at 8. It noted that marijuana is used by researchers for clinical research under investigational new drug (''IND'') applications, and that there are multiple DEA registrants that are approved to produce marijuana and derived formulations for use in DEA-authorized nonclinical and clinical research. HHS observed that these authorizations represent the only federally sanctioned drug channels in the United States, and there is a lack of data indicating diversion occurring from these entities or activities. However, there are significant additional sources of marijuana in the United States, including from illicit cultivation and production, illicit importation from other countries, and from State programs that permit dispensing of marijuana for medical use and, in some States, recreational adult use. HHS Basis for Rec. at 8.

Given this unique landscape, DEA believes that the lack of data indicating diversion of marijuana from federally sanctioned drug channels to the illicit market is not indicative of a lack of potential for abuse of the drug. DEA anticipates that additional data on diversion from State programs and DEA-registered manufacturers may aid in a determination of whether diversion is taking place.

C. Whether individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of their professional practice.

As HHS notes, the Food and Drug Administration (''FDA'') has not approved a New Drug Application (''NDA'') for a drug product containing botanical marijuana for any therapeutic indication. Thus, the only way an individual can use marijuana on the basis of medical advice through legitimate channels under Federal law is by participating in research under an IND. However, 38 States and the District of Columbia have enacted laws allowing individuals to use marijuana under certain circumstances for medical purposes. Outside of the Federal- and State-sanctioned medical use of marijuana, individuals are using marijuana on their own initiative for medical, as well as nonmedical, purposes. Epidemiological data related to nonmedical use of marijuana is detailed in HHS's analysis of Factor 4. HHS Basis for Rec. at 8.

DEA notes that data is not available to determine the number of individuals using marijuana under State law. According to 2022 National Survey on Drug Use and Health (''NSDUH'') data on people who are 12 and older in the United States, 61.9 million people reported using marijuana in the past year, and marijuana was the illicit drug used with the greatest frequency.[13] Specifically, 42.3 million people reported use in the past month, including 14.7 million people who vaped marijuana in that same period, representing 5.2 percent of the study's target population.[14] Furthermore, as reported by NSDUH in 2022, 3.7 million people initiated marijuana use in the past year, with more than half (53 percent or 2.0 million people) initiating marijuana use before the age of 21.[15] DEA also notes that HHS concluded that, outside of the Federal- and State-sanctioned medical use of marijuana, individuals are using marijuana on their own initiative for medical as well as nonmedical purposes. HHS Basis for Rec. at 8. In 2016, DEA reached a similar conclusion.[16] In addition to the data considered in the HHS Basis for Recommendation, and by HHS and DEA in their earlier eight-factor analyses, DEA anticipates that updated epidemiological survey data since 2022 may be appropriate for consideration.

D. Whether the drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that it will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that they have a substantial capability of creating hazards to the health of the user or to the safety of the community.

Marijuana has been a schedule I substance since the CSA was enacted in 1970. *See* Public Law 91–513, tit. II, sec. 202(c), 84 Stat. 1236, 1249 (1970); 21 U.S.C. 812(c); *see also* 21 CFR 1308.11(d)(23). The primary compound in marijuana that is responsible for its abuse potential is Δ9-THC (also known as dronabinol, when specifically referring to the *(-)-trans*-Δ9-THC stereoisomer), which has agonist activity at cannabinoid CB_1 receptors. HHS found that there are extensive nonclinical and clinical studies establishing that marijuana, due to the CB_1 agonist activity of its main cannabinoid constituent Δ9-THC, produces rewarding effects that would be consistent with observed long-term patterns of nonmedical use and abuse, both before and in the years since enactment of the CSA. HHS Basis for Rec. at 9. For further discussion of these effects, *see* HHS Basis for Rec. at 9–18 (Factor 2), 28–37 (Factor 4).

Additionally, FDA has approved two drug products containing dronabinol: Marinol (in 1985; schedule III) and Syndros (in 2016; schedule II). HHS Basis for Rec. at 9. Marinol was approved by FDA in 1985 for the treatment of nausea and vomiting associated with cancer chemotherapy in patients who did not respond to conventional anti-emetic treatments. FDA approved Marinol in 1992 for the treatment of anorexia associated with weight loss in patients with acquired

[10] Miech et al., *supra* note 9, at 75.

[11] Drug Abuse Warning Network, Substance Abuse & Mental Health Servs. Admin., *Findings from Drug-Related Emergency Department Visits, 2022,* at 1 (2023), *https://store.samhsa.gov/sites/default/files/pep23-07-03-001.pdf.*

[12] *Id.*at 27.

[13] Substance Abuse & Mental Health Servs. Admin., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health* 14 (Nov. 2023), *https://www.samhsa.gov/data/sites/default/files/reports/rpt42731/2022-nsduh-nnr.pdf.*

[14] *Id.* at 13.

[15] *Id.* at 27.

[16] 81 FR 53691 (''Based on the large number of individuals reporting current use of marijuana and the lack of an FDA-approved drug product in the United States, one can assume that it is likely that the majority of individuals using marijuana do so on their own initiative rather than on the basis of medical advice from a licensed practitioner.'').

immunodeficiency syndrome (''AIDS''). After the first FDA approval, Marinol was transferred from schedule I to schedule II and was later rescheduled to schedule III. Syndros, a drug product also containing dronabinol but formulated in an oral solution, was approved by FDA in 2016 for the treatment of anorexia associated with weight loss in patients with AIDS, as well as nausea and vomiting associated with cancer chemotherapy in patients who failed to respond adequately to conventional anti-emetic treatments. In 2017, DEA rescheduled ''FDA-approved products containing dronabinol in an oral solution'' from schedule I into schedule II. HHS Basis for Rec. at 4.

When Marinol and Syndros were being developed, they underwent a systematic evaluation of their abuse potential based on animal and human behavioral studies, which showed that dronabinol has abuse potential. The abuse-related studies confirmed the abuse potential of Δ9-THC. HHS has concluded that these findings suggest that marijuana will continue to be used nonmedically, diverted from legitimate channels, and trafficked in illicit channels as a potential source for continued nonmedical use in the United States. HHS Basis for Rec. at 9; *see also* HHS Basis for Rec. at 37–45 (Factor 5).

HHS Conclusion With Respect to Factor 1

HHS determined that epidemiological data indicate that marijuana has the potential for creating hazards to the health of the user and to the safety of the community. However, as a relative finding on abuse liability, when comparing marijuana to heroin, oxycodone, hydrocodone, fentanyl, cocaine, ketamine, benzodiazepines, zolpidem, tramadol, and alcohol in various epidemiological databases that allow for some or all of these comparisons, marijuana is not typically among the substances producing the most frequent incidence of adverse outcomes or severity of substance use disorder. HHS Basis for Rec. at 9; *see also* HHS Basis for Rec. at 28–57 (Factors 4, 5, and 6). But as noted above, there are limitations in comparing descriptive data on adverse outcomes across drugs, although descriptive analyses of epidemiologic data are an established practice in previous eight-factor analyses. HHS Basis for Rec. at 9.

In 2016, DEA found that ''[m]arijuana has a high potential for abuse. Preclinical and clinical data show that it has reinforcing effects characteristic of drugs of abuse. . . . Data on marijuana seizures show widespread availability and trafficking.'' 81 FR 53739. DEA believes that additional data in this area may be appropriate for consideration in assessing marijuana's actual or relative potential for abuse.

2. Scientific Evidence of Marijuana's Pharmacological Effects, If Known

The second factor that DOJ and HHS must consider under 21 U.S.C. 811(c) is the scientific evidence of marijuana's pharmacological effects, if known. In making its recommendation, HHS considered the scientific evidence of the pharmacological effects of marijuana based on the effects of Δ9-THC. HHS conducted a scientific evaluation of the neurochemistry, receptor pharmacology, animal abuse-related behavioral effects, and human behavioral and physiological effects of marijuana. HHS Basis for Rec. at 9.

A. Neurochemistry and Receptor Pharmacology of Marijuana

Cannabis is the genus of a plant that contains numerous natural constituents, including cannabinoids. *See* HHS Basis for Rec. at 18–21 (discussing Factor 3). Because cultivated chemovars may vary in their composition and concentration of various chemical constituents, including with respect to whether they contain significant amounts of Δ9-THC or other cannabinoids, marijuana products from different strains will have differing biological and pharmacological profiles. HHS Basis for Rec. at 10.

Marijuana contains at least 560 identified natural constituents, including 125 compounds classified as cannabinoids. Most major cannabinoid compounds occurring naturally in cannabis have been identified chemically, but new and minor compounds are continuously being characterized. HHS Basis for Rec. at 10.

The two most abundant cannabinoids present in marijuana are Δ9-THC and CBD. Δ9-THC is the major psychoactive intoxicating cannabinoid in marijuana and is the component of marijuana that is primarily responsible for its abuse potential. In contrast, CBD has negligible abuse potential, as assessed by FDA during the NDA review for Epidiolex, an FDA-approved drug product containing plant derived, highly purified CBD. HHS Basis for Rec. at 10.

There are two cannabinoid receptors: CB_1 and CB_2. CB_1 and CB_2 receptors belong to the family of G-protein-coupled receptors and present a typical seven transmembrane-spanning domain structure. Cannabinoid receptors primarily link to an inhibitory G protein ($G_{i/o}$), such that adenylate cyclase activity is inhibited when a cannabinoid ligand binds to the receptor. This, in turn, prevents the conversion of adenosine triphosphate to the second messenger, cyclic AMP (''cAMP''), which decreases cAMP levels. As HHS's analysis described, G proteins also contain beta/gamma G protein units that are also liberated following ligand binding, which then bind to and alter ion channel function, including inhibition of voltage-gated ion channels and activation of potassium channels. Ligand binding can also activate some subforms of phospholipase C as well as beta-arrestin protein. All of these second messenger routes amplify the neural signal following cannabinoid binding at the CB_1 and CB_2 receptors. HHS Basis for Rec. at 10.

CB_1 receptors are found primarily in the central nervous system (''CNS''), but are also present in peripheral tissues, such as the liver, heart, and lungs. In the brain, CB_1 receptors are expressed with highest density in the cortical regions, hippocampus, basal ganglia, and cerebellum and with lowest density in brainstem and hypothalamic areas. The localization of these receptors may explain cannabinoid effects on movement coordination, memory, and cognition. Additionally, CB_1 receptors are found in glial cells as well as in the immune system. However, the concentration of CB_1 receptors is considerably lower in peripheral tissues than in the CNS. CB_2 receptors are found primarily in the immune system, including in numerous leukocyte cell types, as well as in activated CNS microglia. Additionally, there is some evidence that CB_2 receptors are localized in the brain, primarily in the cerebellum and hippocampus. The distribution of CB_2 receptors throughout the body is less extensive than the distribution of CB_1 receptors. HHS Basis for Rec. at 10–11.

There are two endogenous cannabinoid receptor agonists: anandamide and arachidonyl glycerol (''2–AG''). At CB_1 receptors, anandamide is a partial agonist with low intrinsic efficacy while 2–AG is a full agonist with high intrinsic efficacy. These endogenous cannabinoid ligands are present in central as well as peripheral tissues. A combination of uptake and hydrolysis terminates the action of anandamide and 2–AG. The endogenous cannabinoid system is a locally active signaling system activated on demand in response to changes to the local conditions to help restore homeostasis. The endogenous cannabinoid system, including the endogenous cannabinoids and the cannabinoid receptors, demonstrates substantial plasticity in response to several physiological and pathological

stimuli. This plasticity is particularly evident in the CNS. HHS Basis for Rec. at 11.

Δ9-THC and CBD have varying affinity and effects at the cannabinoid receptors. HHS determined that Δ9-THC is a partial agonist at both CB_1 (Ki = 18–218 nM) and CB_2 receptors (Ki = 36–309 nM). However, CB_1 receptors are the main pharmacological site of action for Δ9-THC, making CB_1 receptors the site that is responsible for the abuse potential of marijuana. The other CNS site where Δ9-THC may have activity is the $5HT_3$ receptor, where it functions as an antagonist. In contrast, CBD has low affinity for both CB_1 and CB_2 receptors and may act as a negative allosteric modulator or weak antagonist at these sites. CBD has additional CNS effects as a serotonin $5HT_{1A}$ agonist and a serotonin $5HT_{2A}$ weak partial agonist, as well as a serotonin $5HT_{3A}$ antagonist. HHS Basis for Rec. at 11.

In the past 30 years, the potency of marijuana with regard to Δ9-THC has increased dramatically. HHS described one study finding that the concentration of Δ9-THC in marijuana samples in the United States increased from 3 percent in 1991 to 17.1 percent in 2017. These increases are likely due to an increase in the number of high potency samples (*i.e.,* sinsemilla) in the overall samples tested. Based on an evaluation of marijuana seized by DEA, the majority of samples contained high concentrations of Δ9-THC and low concentrations of CBD. HHS Basis for Rec. at 11–12.

B. Animal Abuse-Related Behavioral Effects

Self-Administration

Self-administration is a method that assesses the ability of a drug to produce rewarding effects. The presence of rewarding effects increases the likelihood that individuals will try to obtain additional quantities of a drug. Animal self-administration of a drug is often useful in suggesting whether humans will experience a particular substance as having rewarding effects, which is indicative of abuse potential. For example, the tendency of rhesus monkeys to self-administer a drug is correlated with humans' propensity to abuse it. HHS Basis for Rec. at 12.

Since self-administration is a methodology in which the test drug is typically administered intravenously to rats, it is not possible to evaluate botanical marijuana through self-administration. However, given that Δ9-THC is the primary substance that confers abuse potential to marijuana, its ability to induce self-administration can serve as an indicator of the abuse potential of marijuana. HHS Basis for Rec. at 12.

HHS concluded, after weighing the relevant scientific evidence, that Δ9-THC produces rewarding effects that lead an animal to repeatedly seek out the substance. HHS Basis for Rec. at 12. Specifically, some studies have demonstrated successful animal self-administration of Δ9-THC following intravenous administration, administration of inhaled vapor, oral administration, and intracerebroventricular administration. Other recent animal studies have not been able to produce Δ9-THC self-administration following intravenous administration and oral administration, but HHS concluded that these results were due to the specific methodology of those respective studies, rather than valid evidence of the rewarding effects of Δ9-THC, and thus do not negate HHS's reliance on studies in which Δ9-THC was actively self-administered by animals. HHS Basis for Rec. at 12–13.

Furthermore, a comprehensive deconstruction of which animal methodology is optimal for producing preclinical self-administration of Δ9-THC is not necessary for an evaluation of the abuse potential of marijuana in humans because it is already clear that humans utilize marijuana for its rewarding properties. HHS Basis for Rec. at 13. Animal self-administration is used primarily to predict whether a novel substance is likely to be used by humans for its rewarding properties as an indication of its abuse potential. However, epidemiological data already amply demonstrates that humans self-administer substances that contain Δ9-THC, including botanical marijuana, for their ability to produce positive subjective responses, including euphoria. HHS Basis for Rec. at 13; *see also* sections VI.4–6 of this preamble (discussing Factors 4–6).

Conditioned Place Preference

A conditioned place preference (''CPP'') study is another method for determining whether drugs have rewarding properties; a CPP study relies on an animal's decision to spend time in a location associated with receiving a drug. The studies in which Δ9-THC successfully produced CPP occurred under very specific experimental conditions, similar to the Δ9-THC self-administration studies in animals. Experimental manipulations in CPP studies with Δ9-THC have included varying the animal species, sex, dose, or route of administration; introducing flavors to obscure unpleasant taste; and varying the drug history of the animals tested. However, as with animal self-administration, the purpose of CPP studies is typically to determine if a new drug produces rewarding sensations, which would suggest that a drug has abuse potential in humans. Since it is clear that humans self-administer substances that contain Δ9-THC, including botanical marijuana, HHS determined that it was not necessary to determine which CPP methods are optimal for demonstrating that Δ9-THC has rewarding properties in animals. HHS Basis for Rec. at 13.

Drug Discrimination Studies

Drug discrimination is a method in which animals indicate whether a test drug produces sensations similar to those produced by a training drug with a known pharmacological mechanism of action. Drug discrimination is considered to be an abuse-related study only when the training drug is a known drug of abuse that is scheduled under the CSA and the test drug may have abusable effects similar to the training drug based on having a similar mechanism of action to the training drug. Because animal drug discrimination studies often use Δ9-THC as the standard for establishing if new drugs have classic marijuana-like pharmacological activity, HHS did not examine whether this method should be applied when evaluating the abuse potential of Δ9-THC. HHS Basis for Rec. at 14.

C. Human Behavioral and Physiological Effects

Subjective Effects of Δ9-THC

The psychological, behavioral, and subjective responses to marijuana in humans have been known and characterized since antiquity. In the modern period, data on the psychological, behavioral, and subjective responses to marijuana are available from the drug labels of FDA-approved drug products, from prospective human abuse potential (''HAP'') studies, from accounts published in the scientific and medical literature, and from an evaluation published in 2017 by the National Academies of Science, Engineering, and Medicine (''NASEM''). HHS Basis for Rec. at 14.

FDA-Approved Drug Products Containing Δ9-THC

Clinical scientific studies investigated the effects of Δ9-THC on humans during the development of the FDA-approved drug product Marinol, which contains 2.5, 5, and 10 mg dronabinol (*(−)-trans*-Δ9-THC of synthetic origin in sesame seed oil). During controlled clinical

trials (as reported in section 6.1 of the drug labels for Marinol and Syndros (which relied on the safety data from Marinol during drug development)), various adverse events (''AEs'') were observed, including amnesia, anxiety/nervousness, ataxia, confusion, depersonalization, hallucination, asthenia, palpitations, tachycardia, vasodilation/facial flush, euphoria, paranoid reaction, somnolence, abnormal thinking, dizziness, abdominal pain, nausea, and vomiting. HHS Basis for Rec. at 14–15.

HAP Studies

HAP studies evaluate whether a test drug produces positive subjective responses compared to a placebo and a known drug of abuse that is scheduled under the CSA and serves as the positive control. If the test drug produces rewarding effects that are statistically significantly greater than the placebo, and beyond the acceptable placebo range of response, it is an indication that the drug may have abuse potential. The relative abuse potential is suggested by the responses from the positive control on these measures in comparison to the test drug. HHS Basis for Rec. at 15.

After analyzing a number of HAP studies of marijuana and Δ9-THC, which varied in the in dose of Δ9-THC, the route of administration, or whether the Δ9-THC was provided in the form of marijuana or isolated compound, HHS identified a number of commonalities. First, following administration of the study drug (*i.e.,* marijuana or Δ9-THC), there were increases in positive subjective responses. Second, the studies demonstrated increases on the Addiction Research Center Inventory scales for the morphine benzedrine group (euphoria), marijuana, and amphetamine. HHS concluded that these data consistently demonstrated that Δ9-THC, in the form of marijuana or as an isolated compound, produces rewarding effects that are indicative of abuse potential when it is administered under controlled experimental conditions. Third, and in contrast to the prior findings, the data also demonstrated that the administration of marijuana or Δ9-THC may result in negative subjective responses reflecting negative drug effects and sedation; these are often delayed in onset from when the positive subjective effects begin. HHS noted that the positive and negative subjective responses following administration of marijuana or Δ9-THC were often dose-dependent. It also noted that there were typically few differences between responses to marijuana and Δ9-THC, or between responses based on route of administration of the study drug. HHS Basis for Rec. at 15.

Common Responses to Marijuana in Humans Published in Scientific and Medical Literature

HHS concluded that the responses to dronabinol reported during development of Marinol and the responses to marijuana and Δ9-THC reported in HAP studies paralleled the common responses to marijuana that have been described by other medical scientists. These responses include positive subjective responses (such as euphoria or happiness), sedative responses (such as drowsiness or changes in sleep), anxiety and negative responses (such as panic attacks, agitation, and paranoia), perceptual changes (such as hallucinations and changes in perception), psychiatric, social, and cognitive changes (such as drug abuse, delusions, memory and concentration impairment, and impaired judgment), and physiological responses (such as nausea, tachycardia, facial flushing, dry mouth, tremor, dizziness, ataxia, and hyperemesis). The literature reviewed by HHS also concluded that the positive changes that occur following use of marijuana are pleasurable to many humans and are associated with drug-seeking and drug-taking; and that these effects are typically dose-dependent, with higher doses and routes of administration that produce faster onset producing more intense responses and the likelihood of more negative subjective effects. HHS Basis for Rec. at 16–17.

National Academies of Science, Engineering, and Medicine (NASEM)

HHS also reviewed a book-length evaluation of marijuana by NASEM entitled *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research.*[17] According to HHS, in this evaluation, NASEM provided a brief summary of the clinical features of marijuana intoxication and found that (1) during acute cannabis intoxication, the user's sociability and sensitivity to certain stimuli (*e.g.,* colors, music) may be enhanced, the perception of time is altered, and the appetite for sweet and fatty foods is heightened; (2) some users report feeling relaxed or experiencing a pleasurable rush or buzz after smoking cannabis; (3) these subjective effects were often associated with decreased short-term memory, dry mouth, and impaired perception and motor skills; and (4) when very high blood levels of Δ9-THC were attained, persons might experience panic attacks, paranoid thoughts, and hallucinations. HHS Basis for Rec. at 17–18.

HHS Conclusion With Respect to Factor 2

Based on its analysis of the studies discussed above, HHS concluded that Δ9-THC, the substance largely responsible for the abuse potential of marijuana, is a partial agonist at the cannabinoid CB_1 receptor. When Δ9-THC is administered to animals, it produces rewarding responses, as evidenced by its ability to induce self-administration and CPP. This is consistent with the data from human studies and from clinical observations, where administration of Δ9-THC or use of marijuana produces euphoria and other pleasurable responses, as well as sedation and anxiety responses. Psychiatric, social, and cognitive responses, which are often experienced as negative, are also reported, as are physiological responses such as dry mouth, ataxia, and increased hunger. As described in HHS's analysis of Factor 4, *see* HHS Basis for Rec. at 32–37, the rewarding responses observed in humans are consistent with the prevalence of nonmedical use of marijuana, which includes abuse of the substance. Abuse of marijuana by individuals can lead to other negative consequences, including addiction and the need to seek medical attention through calls to poison centers or visits to an ED, as described in Factor 5, *see* HHS Basis for Rec. at 38–39, 42. HHS Basis for Rec. at 18.

DEA believes that additional data on marijuana's pharmacological effects may be appropriate for consideration in assessing this factor.

3. The State of Current Scientific Knowledge Regarding Marijuana

The third factor that DOJ and HHS must consider under 21 U.S.C. 811(c) is the state of current scientific knowledge regarding marijuana. In considering this factor and making its recommendation, HHS examined the chemistry of marijuana and the human pharmacokinetics of marijuana. HHS Basis for Rec. at 18–24.

Chemistry

Cannabis is a genus of annual flowering plant with digitate leaves in the family *Cannabaceae* Martinov that likely originated in Central or Southeast Asia over 10,000 years ago and was first cultivated in China for fiber and seed production. Cultivation eventually

[17] National Academies of Science, Engineering, & Medicine, *The Health Effects of Cannabis & Cannabinoids: The Current State of Evidence & Recommendations for Research* (2017), *https://nap.nationalacademies.org/read/24625/chapter/1.*

spread across Asia, Africa, and Europe and then to the Americas. A longstanding and significant historical debate by botanists and taxonomists continues today regarding the number of species in the *Cannabis* genus, but it is generally treated as a single, highly polymorphic species known as *Cannabis sativa* L., with the other two previously reported species listed as *Cannabis indica* Lam. and *Cannabis ruderalis* Janisch. Plants previously believed to be part of the latter two species are generally recognized as varieties (or subspecies) of *Cannabis sativa* L., which are commonly referred to as *sativa* var. *indica* and *sativa* var. *ruderalis. Cannabis sativa* and *sativa* var. *indica* plants are widely cultivated for their size, branching, and cannabinoid content, while *sativa* var. *ruderalis* is rarely cultivated alone because it is shorter, is often unbranched, and has very low cannabinoid content. Worldwide *Cannabis* varieties are separated into hundreds of different cultivars and strains. Plants selected for cultivation are known as cultivated varieties or cultivars, whereas plants reproduced asexually from a cultivar through clonal propagation are known as strains. These practices have resulted in significantly different chemical profiles for *Cannabis* cultivars, and the classification term to account for these chemical profile differences has evolved. The term ''chemovar'' accounts for the plant's chemical profile and is a more meaningful classification for clinical researchers studying the plant's potential drug effects. Marijuana products developed from diverse chemovars will have different safety, biological, pharmacological, and toxicological profiles. HHS Basis for Rec. at 18–19.

Cannabis is a dioecious plant, meaning female and male flowers occur on separate plants, and rarely occurs as a monoecious plant (*i.e.,* single plant containing male and female flowers). The glandular trichomes found on the female plant's unfertilized flower heads and bracts contain the highest concentrations of cannabinoids. For this reason, unfertilized female chemovars are favored to harvest large inflorescences (*i.e.,* complete flower head) for their rich cannabinoid and terpene content. HHS Basis for Rec. at 19.

The *Cannabis sativa* L. plant naturally contains many different compounds, and more than 550 have been identified, such as cannabinoids, terpenoids, flavonoids, stilbenoids, steroids, polysaccharides, benzoquinone, phenanthrenes, spiroindans, lignans, fatty acids, sugars, hydrocarbons, amino acids, and proteins. Cannabinoids are mainly found in living *Cannabis sativa* L. plants in their non-psychoactive carboxylated forms (*i.e.,* acid form), which require drying, heating, combustion, or aging to decarboxylate to their neutral forms, and are primarily composed of C_{21} terpenophenolic compounds. The most abundant neutral form cannabinoids are Δ9-THC and CBD, but nearly 200 have been identified in the plant and are divided into subclasses: cannabigerols, cannabichromenes, CBDs, Δ9-THCs, *(-)*-Δ8-*trans*-tetrahydrocannabinols (''Δ8-THCs''), cannabicyclols, cannabielsoins, cannabinols, cannabinodiols, cannabitriols, and the miscellaneous cannabinoids. HHS Basis for Rec. at 19.

Like any other botanical substance, marijuana plants are heterogeneous in nature and contain a complex chemical profile. Moreover, variable organic plant material, as well as manufactured preparations, result in a variety of product forms that dictate different routes of administration, associated risks, and differences in quality of the product used, which may also influence risk for users. Among other things, these differences can result from differences in harvest location, growing conditions, the season in which the marijuana is harvested, and the manner in which the marijuana is processed, handled, transported, and tested. The potential for high variability of marijuana and marijuana-derived products, both in product composition and impurity profile, is a major consideration for the potential variability of drug effects and safety. HHS Basis for Rec. at 19–20.

Processing of marijuana and its use in further manufacturing can lead to a range of forms that individuals may use or consume, including crude mixtures and highly purified substances of botanical origin, many of which may be cannabinoid compounds. Among known cannabinoids in the *Cannabis* plant, both Δ9-THC and Δ8-THC produce marijuana's psychoactive effects. Because Δ9-THC is significantly more abundant than Δ8-THC, marijuana's intoxicating effects are largely attributed to the former. Only small quantities of Δ8-THC acid and Δ8-THC have been identified in plants. HHS Basis for Rec. at 20.

As noted above, the 2018 amendments to the CSA removed hemp from the definition of marijuana. However, the term ''cannabis'' is still often broadly used to refer to a wide variety of products manufactured from the *Cannabis sativa* L. plant, regardless of their control status. As a result of the 2018 amendments to the CSA, a large hemp marketplace exists, containing a wide variety of products. In addition, the public has access to cannabis products within the CSA definition of marijuana through State-authorized adult-use (*i.e.,* nonmedical use) and medical-use programs, as well as via the illicit marketplace. *See* HHS Basis for Rec. at 28–37 (Factor 4). Because of these diverse sources of marijuana, there is a lack of unified controls on cultivation and manufacturing, which raises concerns related to the safety, quality, and consistency of botanical substances (*e.g.,* botanical raw materials, extracts, and intermediates) and final product formulations that are currently accessed for medical and nonmedical use. Products sourced from State-authorized adult-use and medical-use programs are subject to a patchwork of inconsistent product standards and safety requirements. Although some State programs have a set of standards (for example, on manufacturing, testing, labeling, and packaging), each program's controls are different, leading to a wide variation of products across State-authorized programs. And the illicit marketplace is not subject to any standards or oversight. As a result, the range of products within the CSA's definition of marijuana encompasses a large degree of variation in forms for consumption, composition of biologically relevant constituents, potency, and contaminants. HHS Basis for Rec. at 21.

In short, marijuana has hundreds of chemovars containing variable concentrations of Δ9-THC, cannabinoids, and other compounds. As a result, in evaluating whether to recommend that marijuana be rescheduled, HHS focused to the greatest extent possible on wide-ranging substances derived from cannabis plants that are vehicles for the self-administration of Δ9-THC as the key biologically active substance on which the CSA's current definition of marijuana is based. HHS Basis for Rec. at 21.

Human Pharmacokinetics of Δ9-THC

HHS reported that the pharmacokinetics of Δ9-THC in humans—*i.e.,* the study of how the body interacts with Δ9-THC—have been evaluated following inhaled administration of marijuana and oral administration of marijuana. These are the most frequently used routes of administration for marijuana or isolated Δ9-THC. HHS Basis for Rec. at 21.

Marijuana is commonly administered by humans via inhalation through smoking and, more recently, through vaping (*e.g.,* heating and inhalation of

botanical matter or other volatile substances containing Δ9-THC). Generally, inhalation of a drug is the route that produces the fastest rate of drug absorption. Once marijuana is inhaled, Δ9-THC is absorbed through the lungs in the form of an aerosol within seconds. Peak plasma levels of Δ9-THC following inhalation occur very quickly, within 6 to 10 minutes. Psychoactive effects begin immediately following absorption, although peak subjective effects do not coincide with peak plasma Δ9-THC levels and are often delayed. Following administration of marijuana through inhalation, the bioavailability of Δ9-THC is 10 percent to 35 percent. That bioavailability is relatively low and varies widely due to several factors. An individual's experience and technique with smoking marijuana also determines the dose absorbed. HHS Basis for Rec. at 22.

When marijuana or Δ9-THC is administered orally (such as by eating marijuana-infused foods), the effects start within 30 to 90 minutes, reach their peak at 1.5 to 3 hours, and remain measurable for 4 to 12 hours. Oral bioavailability of Δ9-THC, following ingestion of an edible containing marijuana or isolated Δ9-THC, ranges from 5 to 20 percent. The low and variable bioavailability of Δ9-THC from oral ingestion is a consequence of its first-pass hepatic elimination from blood and erratic absorption from stomach and bowel. Ingestion of brownies containing marijuana also results in lower Δ9-THC plasma levels relative to inhalation of marijuana. HHS Basis for Rec. at 22–23.

Although there are differences in absorption of Δ9-THC depending on route of administration, the distribution, metabolism, and excretion of Δ9-THC is similar regardless of how the drug is administered. Plasma concentrations of Δ9-THC decrease quickly after absorption through rapid distribution into tissues and through liver metabolism. Because Δ9-THC has high lipophilicity, the apparent volume of distribution of Δ9-THC is high (10 L/kg) as it is distributed initially into organs such as lung, heart, brain, and liver that are highly perfused. Over time with regular exposure to marijuana, Δ9-THC will concentrate and be retained in fat. HHS Basis for Rec. at 23.

Metabolism of Δ9-THC occurs primarily via cytochrome P450 isozymes (CYP2C9, CYP2C19, and CYP3A4) via microsomal hydroxylation to both active and inactive metabolites. The primary active metabolite of Δ9-THC is 11-hydroxy-Δ9-THC. Δ9-THC clears from the blood relatively rapidly, largely because it is redistributed to other tissues in the body. Metabolism of Δ9-THC in most tissues is relatively slow or absent. The majority of the absorbed Δ9-THC dose is eliminated in feces, and about 33 percent in urine. HHS Basis for Rec. at 23.

HHS Conclusion With Respect to Factor 3

In conclusion, HHS found that the pharmacokinetic profile of marijuana varies greatly depending on route of administration. Inhalation of marijuana produces a rapid increase in plasma levels of Δ9-THC and an immediate onset of psychological effects. In comparison, oral administration of marijuana produces a much slower increase in plasma levels of Δ9-THC and onset of psychological effects. Once Δ9-THC has been absorbed, however, the metabolism and excretion of Δ9-THC follows a standard path. HHS Basis for Rec. at 24.

DEA likewise notes that there is considerable variability in the cannabinoid concentrations and chemical constituency among marijuana samples and that the interpretation of clinical data related to marijuana is complicated. A primary issue is the lack of consistent concentrations of Δ9-THC and other substances in marijuana, which complicates the interpretation of the effects of different marijuana constituents. Additionally, the non-cannabinoid components in marijuana may potentially modify the overall pharmacological and toxicological properties of various marijuana strains and products. DEA anticipates that additional data on other marijuana constituents, routes of administration of marijuana, and the impact on Δ9-THC potency may be appropriate for consideration.

4. Marijuana's History and Current Pattern of Abuse

The fourth factor that DOJ and HHS must consider under 21 U.S.C. 811(c) is marijuana's history and current pattern of abuse, which can include its abuse relative to relevant comparator substances that are abused. *See* HHS Basis for Rec. at 28–37. HHS concluded that it is appropriate to consider the Federal- and State-level history of marijuana control, marijuana sources for nonmedical and medical use, marijuana use in the United States since passage of the CSA, and current patterns of use and abuse of marijuana. HHS Basis for Rec. at 28.

Federal History of Marijuana Control

According to HHS, marijuana was described in the United States Pharmacopoeia [18] as early as 1850. Around the time that Congress passed the Pure Food and Drug Act of 1906, Public Law 59–384, 34 Stat. 768, drugs such as marijuana, alcohol, heroin, morphine, and cocaine began to be characterized by the Federal Government as addictive and dangerous. These drugs were frequently included in patent medicines, often without the consumer's knowledge. The 1906 law required accurate drug labeling with respect to ingredients and dosage. But it did not prohibit the sale or possession of drugs characterized as addictive and dangerous drugs, including marijuana. As nonmedical use of marijuana and opioids became more popular in the United States, Congress provided funding in 1929 for two ''narcotic farms'' in Lexington, Kentucky, and Fort Worth, Texas, which were medical treatment centers run by the Public Health Service for federal prisoners who were ''habitual users of narcotics,'' including marijuana-derived products. HHS Basis for Rec. at 28–29.

In the first half of the twentieth century, marijuana use was curbed by several Federal laws. In 1931, the importation of marijuana into the United States began to be restricted under regulations under the Pure Food and Drug Act, except for medicinal purposes. The Marihuana Tax Act of 1937, Public Law 75–238, 50 Stat. 551, imposed taxes that effectively prohibited marijuana use for medical, nonmedical, scientific, or industrial purposes. Five years later, in 1942, marijuana was removed from the United States Pharmacopoeia. Through the imposition of mandatory minimums, the Boggs Act of 1951, Public Law 82–255, 65 Stat. 767, lengthened the average sentence for first time marijuana offenders to 2 to 5 years, similar to that for opioid offenses, regardless of whether the individual was a nonmedical user or a trafficker. The Narcotic Control Act of 1956, Public Law 84–728, 70 Stat. 567, increased the minimum sentence for a first offender for marijuana to 2 to 10 years. HHS Basis for Rec. at 29.

Despite the legal consequences, nonmedical marijuana use increased dramatically in the 1960s, especially among youth. Congress passed the CSA in 1970. The CSA effectively repealed

[18] The United States Pharmacopoeia was formed as an ''independent, scientific, non-profit organization dedicated to public health'' that published ''a national, uniform set of guidelines for the best understood medicinal substances and preparations of the day.'' *Building Trust for Over 200 Years: A Timeline of USP,* U.S. Pharmacopoeia, *https://www.usp.org/200-anniversary/usp-timeline* (last visited May 11, 2024).

all previous Federal drug laws, including the Marihuana Tax Act, and provided a unified framework for control of drugs with abuse potential. When the CSA was enacted, marijuana was placed into schedule I, which prohibited use of marijuana for medicinal or nonmedical purposes other than legitimate scientific research and analysis. This placement was consistent with the criteria established by the CSA under 21 U.S.C. 812. HHS Basis for Rec. at 29–30.

Marijuana Control at the State Level

According to HHS, changes in State-level marijuana laws in the United States in the modern era began in 1996 with the approval of Proposition 215, the Compassionate Use Act, by voters in California. This law legalized the use, possession, and cultivation of marijuana for treatment of patients with cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief, when recommended by a physician. Under the law, marijuana could also be cultivated by patient caregivers. HHS Basis for Rec. at 30.

As of August 2023, when HHS submitted its Basis for Recommendation to DEA, State-level laws allowing medicinal use of marijuana had been passed in a total of 38 States, plus the District of Columbia: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and West Virginia. Medical use of marijuana was legalized through the action of 20 State legislatures and by 18 ballot measures.[19] HHS Basis for Rec. at 30.

In 2012, Colorado and Washington became the first States to legalize the nonmedical use of marijuana. As of August 2023, State-level legalization of the nonmedical use of marijuana has occurred in a total of 23 States and the District of Columbia: Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington. Nonmedical use of marijuana was legalized by ballot initiatives in 13 States and by State legislatures in 9 States. HHS Basis for Rec. at 30.

Marijuana Use in the United States Since Passage of the CSA

Marijuana use has varied since the CSA was passed in 1970. Gallup Poll data from 1969 to 2013 show a steady increase over time in affirmative responses to whether the respondent had personally tried marijuana, with only 4 percent of people saying they had tried marijuana in 1969 compared to 38 percent in 2013. As HHS observed, the 2017 NASEM report stated that the prevalence of marijuana use peaked in the late 1970s, declined through the 1980s, and then increased again in the mid-1990s. From 2007 to 2017, there were steady year-over-year increases in the share of the general population that used marijuana in the past month, although there is no clear explanation for the post-2007 increase in use rates. HHS Basis for Rec. at 31–32.

Current Patterns of Use and Abuse of Marijuana

In considering current patterns of use and abuse of marijuana and marijuana-derived products, HHS analyzed epidemiological databases from 2015 to the most recent years of available data (which vary among data sources). A wide variety of epidemiological databases provide necessary data for HHS's analyses. These include the NSDUH; Behavioral Risk Factor Surveillance System (''BRFSS''); Research Abuse, Diversion and Addiction-Related Surveillance (''RADARS''); Nonmedical Use of Prescription Drugs (''NMURx''); Monitoring the Future (''MTF''); Youth Risk Behavioral Surveillance System (''YRBSS''); and International Cannabis Policy Study (''ICPS''). HHS Basis for Rec. at 32.

National Survey on Drug Use and Health

Based on NSDUH data, HHS concluded that from 2015 to 2019 the past-year use of marijuana for any reason (nonmedical and medical) among people ages 12 years and older increased from 14 percent to 18 percent. By contrast, past-year (nonmedical and medical) use of comparator drugs that have FDA-approved therapeutic indications declined or remained relatively stable over the same timeframe, including hydrocodone (22 percent to 16 percent), benzodiazepines (12 percent to 11 percent, 2017 to 2019 only), oxycodone (11 percent to 9 percent), tramadol (7 percent to 6 percent), zolpidem (4 percent to 3 percent), and ketamine (less than 1 percent). Although there were trend breaks for the years 2020 and 2021,[20] marijuana past-year use continued to increase during these two years. HHS Basis for Rec. at 32–33.

Based on NSDUH data, HHS concluded that from 2015 to 2019, the prevalence of past-year nonmedical use of marijuana (*i.e.,* use without a health care provider (''HCP'') recommendation) among people ages 12 years and older also increased. HHS's finding was based on an increase in the prevalence of overall nonmedical use of marijuana from 12 percent to 15 percent and on an increase in nonmedical use of marijuana only, without nonmedical use of other drugs that are abused, from 8 percent to 11 percent during this period. There was a slight decrease in both categories in 2020, but the prevalence of both kinds of uses increased again in 2021 (to 16 percent and 11 percent, respectively) to levels that were higher than those reported in 2019. In contrast, the prevalence of past-year nonmedical use of comparator drugs was less than 3 percent for heroin, cocaine, oxycodone, hydrocodone, tramadol, benzodiazepines, and zolpidem, which is much less than that for marijuana, either alone or with other drugs. Over the 2015 to 2021 reporting period, the overall use of these comparator drugs declined slightly or remained fairly stable. Notably, the majority of individuals who reported nonmedical use of marijuana did not report nonmedical use of the comparator drugs. And over the same reporting period of 2015 to 2021, the prevalence of past-year use of alcohol ranged from 62 percent to 65 percent for individuals ages 12 years and older, far exceeding the prevalence for marijuana or other comparator drugs. These data demonstrate that alcohol has the highest prevalence of past-year-only use, followed by nonmedical use of marijuana. The prevalence of the other comparators is far below that of alcohol and marijuana. HHS Basis for Rec. at 33.

HHS also concluded that the NSDUH data show that most individuals who used marijuana in the past year did not do so based on a recommendation from an HCP, but marijuana use was more frequent among users with an HCP

[19] Data on the number of patients who participate in State-sanctioned medical cannabis use is available here: *Medical Cannabis Patient Numbers,* Marijuana Pol'y Project, *https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers* (last visited May 13, 2024).

[20] HHS noted that NSDUH data collection was disrupted in 2020 and 2021 due to the COVID–19 pandemic, leading to trend breaks in these years. HHS Basis for Rec. at 32.

recommendation. The yearly percentage of individuals who used marijuana but did not have an HCP recommendation ranged between 84 and 89 percent between 2015 and 2021; by comparison, exclusive medical use of marijuana that was recommended by an HCP ranged between 7 and 10 percent of marijuana users in the same period. According to HHS, approximately 50 percent of those individuals without an HCP recommendation used marijuana for 60 or fewer days in the year, while 29 percent used marijuana for more than 241 days in the year. In contrast, for those individuals whose use of marijuana was sometimes or always recommended by an HCP, 51 percent and 55 percent (respectively) used marijuana at least 241 days in the year. HHS Basis for Rec. at 33–34.

The NSDUH data from 2021 showed that among individuals who used any marijuana in the past year, 69 percent used marijuana in the prior month. For comparator drugs, the percentage of individuals with past-year use who used each substance nonmedically in the past month was 76 percent for alcohol, 49 percent for heroin, 38 percent for cocaine, and 28 percent for ketamine. HHS Basis for Rec. at 34.

Behavioral Risk Factor Surveillance System

BRFSS is a national, State-based, cross-sectional telephone survey conducted by the Centers for Disease Control and Prevention (''CDC''). The participants in the 2021 BRFSS module for marijuana included approximately 68 million individuals 18 years and older, residing in 24 States and Territories: Alaska, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Utah, Vermont, Wyoming, and Guam. HHS Basis for Rec. at 34.

For the 2021 survey year, the estimated prevalence of past-month marijuana use for any reason in the BRFSS survey was 12 percent, with 88 percent reporting no marijuana use. Among those with past-month marijuana use, the mean frequency of use was 17 days per month, with half of respondents reporting that they used marijuana 20 to 30 days per month. This pattern was consistent across all age and sex categories. HHS Basis for Rec. at 34.

When the reason for use was evaluated, the percentage of individuals who reported use for both medical and nonmedical reasons was 39 percent, compared to 36 percent for those who reported use for nonmedical reasons only, and 25 percent for those who reported use for medical reasons only. Those individuals who reported past-month use of marijuana for medical reasons were more likely to be adults 55 years and older, while individuals who reported past-month marijuana use for nonmedical reasons only were more likely to be younger adults aged 18 to 24 years. HHS Basis for Rec. at 34.

Individuals who reported using marijuana in the past 30 days for both nonmedical and medical reasons were more likely (62 percent) to report marijuana use near daily (20 to 30 days per month) than individuals who reported marijuana use for nonmedical reasons only (34 percent). Similarly, individuals who used marijuana for medical reasons only were also more likely (57 percent) to report near daily use than those who used it for nonmedical reasons only. HHS Basis for Rec. at 34.

Researched Abuse, Diversion and Addiction-Related Surveillance System Survey of Nonmedical Use of Prescription Drugs

The RADARS System conducts the NMURx Program, a serial, cross-sectional, online survey of the general adult population (18 years and older) to elicit information on the nonmedical use of drugs (prescription, nonprescription, unapproved, and illicit). The NMURx Program estimates represent measures of past-year drug use in an enriched sample of United States adults with higher-than-average nonmedical use of prescription pain relievers and illicit drugs. NMURx program data demonstrated that past-year use of marijuana was reported by 21 percent of individuals, while past-year use of comparator substances was substantially lower: benzodiazepines (4 percent), hydrocodone, oxycodone, tramadol (2 percent), cocaine or crack (less than 2 percent), and illicit fentanyl, heroin, and ketamine (less than 1 percent). This pattern of much greater marijuana use compared to other drugs is consistent with the patterns reported in NSDUH and BRFSS. HHS Basis for Rec. at 35.

Monitoring the Future

MTF collects information on the use of selected prescription and illicit drugs and alcohol by conducting an annual, nationally representative, cross-sectional survey of 8th, 10th, and 12th graders in public and private schools.[21] MTF data showed that during the years 2012 to 2022, the illicit drug most frequently used by 12th-grade students who reported past-year drug use was marijuana/hashish (approximately 35 percent per year from 2012 to 2020, with a reduction to 30 percent per year in 2021 and 2022). In contrast, in 2022, alcohol was used by 52 percent of 12th-grade students within the last 12 months, similar to percentages in 2019 and 2020 (52 percent and 55 percent, respectively), but higher than the 2021 level of 47 percent. All other comparator drugs (hydrocodone, heroin, tramadol, cocaine, ketamine, and zolpidem) were each used in the past year by fewer than 5 percent of 12th graders from 2012 to 2022. HHS Basis for Rec. at 35.

MTF data for past-month use showed a similar pattern. During the years 2012 to 2022, the illicit drug most frequently used by 12th-grade students who reported past-month drug use was marijuana/hashish (approximately 20 to 22 percent per year) compared to past-month use of cocaine (approximately 1 percent per year) or heroin (less than 0.5 percent per year). However, past-month alcohol use by 12th-grade students (28 percent) exceeded that of marijuana in 2022. For those who used marijuana in the past month, 6 to 7 percent used it daily. By comparison, for those who used cocaine and heroin in the last month, less than one percent used it daily. MTF does not provide past-month use data for hydrocodone, heroin, tramadol, ketamine, or zolpidem. HHS Basis for Rec. at 35.

Youth Risk Behavior Surveillance System

YRBSS was established by the CDC and conducts school-based surveys every 2 years, in partnership with State, local, Territorial, and Tribal governments, with a focus on youth health behavior in the United States. The YRBSS high school component, the Youth Risk Behavior Survey, includes a nationally representative survey of 9th- through 12th-grade students. YRBSS data showed that from 2009 to 2019, approximately 20 percent of students in 9th through 12th grade reported using marijuana at least once in the past month during each year evaluated. When students 17 years and older were asked how old they were when they first used marijuana, 43 percent reported they initiated use between the ages of 15 to 16 years, 25 percent initiated use between the ages of 13 to 14 years, and 13 percent initiated use at 12 years of age and younger. YRBSS data also showed, however, that past-month alcohol use by high school students (29 percent) in 2019 was greater than that of marijuana use, while past month

[21] As a result of the COVID–19 pandemic, there is a potential trend break in the 2020 MTF data. HHS Basis for Rec. at 35.

prescription opioid misuse (including codeine, hydrocodone, or oxycodone) (7 percent) in 2019 was much lower than that of both alcohol and marijuana use. HHS Basis for Rec. at 36.

International Cannabis Policy Study

ICPS conducted serial, cross-sectional surveys from 2019 to 2021 of individuals ages 16 to 65 years living in the United States to understand the public health impact of marijuana legalization. HHS's evaluation of that survey data focused on respondents who reported at least some past-year marijuana nonmedical use (by indicating that they were not a medical marijuana user, defined as someone who uses marijuana only to treat a medical condition). HHS Basis for Rec. at 36.

According to HHS, ICPS data showed that the prevalence of past-year nonmedical use of marijuana ranged from 18 percent to 22 percent of individuals surveyed from 2019 to 2021, while the prevalence of past-month nonmedical use was lower, ranging from 12 percent to 14 percent of individuals surveyed. Individuals aged 26 to 34 years had the highest relative prevalence of nonmedical marijuana use, with 26 percent reporting past-year use and 18 percent reporting past-month use. When those individuals who reported past-year marijuana use in 2021 were asked why they used the drug, 33 percent reported use for medical reasons, while 61 percent were classified as using marijuana for nonmedical reasons only. (The other 6 percent did not respond.) HHS Basis for Rec. at 36.

When frequency of nonmedical use of marijuana was evaluated in ICPS for those individuals who used marijuana nonmedically at least once a year, individuals aged 16 to 17 years had the highest percentage of use less than once a month (approximately 40 percent, compared to approximately 25 to 31 percent for other age cohorts); while individuals aged 26 to 34 years had the highest percentage of daily use (approximately 43 percent, compared to approximately 34 to 37 percent for individuals in other adult cohorts and approximately 24 percent among individuals 16 and 17 years). Among individuals who used marijuana for nonmedical reasons in the past year, 49 percent reported never using alcohol and marijuana at the same time, while 35 percent sometimes used the two substances together, 9 percent often used them together, and 5 percent used alcohol every time they used marijuana. HHS Basis for Rec. at 36–37.

HHS Conclusion With Respect to Factor 4

In light of the evidence cited above, HHS determined that certain conclusions could be drawn about marijuana's current pattern of abuse. HHS concluded that the use of marijuana for medical and nonmedical purposes is extensive in the United States. HHS also concluded that the prevalence of marijuana use is less than that of alcohol and significantly more than that of other drugs of abuse that are scheduled under the CSA. Specifically, HHS noted that NSDUH data from 2015 to 2019 showed that the prevalence of past-year use of alcohol was five to six times greater than that of nonmedical use of marijuana. In contrast, the prevalence of past-year nonmedical use of heroin, cocaine, oxycodone, hydrocodone, tramadol, benzodiazepines, and zolpidem was four to five times less than that of marijuana nonmedical use. Similar past-year comparative drug use data were reported in RADARS–NMURx, MTF, and ICPS. HHS Basis for Rec. at 37. In 2016, DEA found that marijuana continues to be the most widely used illicit drug. It noted that in 2014, there were 22.2 million current users; that there were also 2.6 million new users, most of whom were less than 18 years of age; and that marijuana was the most frequently identified drug identified in Federal, State, and local forensic laboratories. 81 FR 53739. In addition to the data provided in the HHS Basis for Recommendation and the data considered by HHS and DEA in their 2015 eight-factor analyses, DEA anticipates that additional information arising from this rulemaking will further inform the findings that must be made to reschedule marijuana, including with respect to this factor. DEA also notes that, according to the World Health Organization, cannabis is globally the most commonly used psychoactive substance under international control.[22] Accounting for half of all drug seizures worldwide, the global annual prevalence of cannabis consumption is 2.5 percent or about 147 million people.[23] In 2016, an estimated 28.6 million individuals age 12 or older were current (in the past month) illicit drug users.[24] By 2020, approximately 59.3 million individuals age 12 or older reported using an illicit drug within the past year; 83.6 percent (49.6 million) of those past-year illicit drug users reported using marijuana.[25] In 2022, the Domestic Cannabis Eradication and Suppression Program was responsible for the eradication of 4,435,859 illegally cultivated outdoor cannabis plants and 1,245,980 illegally cultivated indoor plants for a total of 5,681,839 illegally cultivated marijuana plants.[26] DEA believes that additional data on marijuana's pattern of abuse may be appropriate for consideration in assessing this factor.

5. The Scope, Duration, and Significance of Abuse

The fifth factor that DOJ and HHS must consider under 21 U.S.C. 811(c) is the scope, duration, and significance of marijuana abuse. In conducting its analysis, HHS analyzed the consequences over time of marijuana abuse compared to the abuse of other substances based on data from the United States Poison Centers National Poison Data System (''NPDS''), NSDUH, the Treatment Episode Data Set (''TEDS''), the National Addictions Vigilance Intervention and Prevention Program (''NAVIPPRO''), the National Emergency Department Sample (''NEDS''), the National Inpatient Sample (''NIS''), and the National Forensic Laboratory Information System (''NFLIS''). HHS Basis for Rec. at 37–45.

Epidemiological Data on Consequences of Marijuana Abuse

National Poison Data System

Data from NPDS provide information on the scope of contacts with a poison center (''PC'') following marijuana abuse relative to abuse of selected comparators. HHS Basis for Rec. at 38.

The number of PC abuse cases for a substance (either alone or in combination with another substance) for the period of 2015 to 2021 showed that the highest number of PC abuse cases was for alcohol, followed by heroin and

[22] World Health Org., *The Health and Social Effects of Nonmedical Cannabis Use,* at v (2016), *https://iris.who.int/bitstream/handle/10665/251056/9789241510240-eng.pdf.*

[23] Alcohol, Drugs & Addictive Behaviours Unit, *Cannabis,* World Health Org., *https://www.who.int/teams/mental-health-and-substance-use/alcohol-drugs-and-addictive-behaviours/drugs-psychoactive/cannabis* (last visited May 13, 2024).

[24] Substance Abuse & Mental Health Servs. Admin., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health* 1 (2017), *https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2016/NSDUH-FFR1-2016.pdf.*

[25] Substance Abuse & Mental Health Servs. Admin, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* 2 (2021), *https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFRPDFWHTMLFiles2020/2020NSDUHFFR1PDFW102121.pdf.*

[26] *Domestic Cannabis Suppression/Eradication Program,* DEA, *https://www.dea.gov/operations/eradication-program* (last visited May 13, 2024).

then benzodiazepines. The fourth highest number of PC abuse cases was for marijuana, with all other comparators showing fewer PC abuse cases. When the PC abuse cases for 2015 to 2021 were analyzed for cases involving a single substance only, the rank order of PC abuse cases by number was the same as the order from all PC abuse cases for substances used alone or in combination with another substance, meaning that marijuana accounted for the fourth highest number of PC abuse cases for a single substance. HHS Basis for Rec. at 38.

HHS's analysis of the data from 2015 to 2021 showed cases resulting from abuse (as opposed to those resulting from other causes, such as accidental ingestion) made up the largest proportion of PC cases for illicit fentanyl (72 percent), heroin (65 percent), cocaine (41 percent) and ketamine (40 percent). The fifth highest percentage was for cases involving marijuana (36 percent), followed by alcohol (15 percent), oxycodone (13 percent), benzodiazepines (8 percent), hydrocodone (5 percent), tramadol (4 percent), and zolpidem (3 percent). A similar analysis for single-substance-only abuse for the same period showed that the three substances most likely to lead to a PC call following abuse were heroin (65 percent), oxycodone (47 percent), and tramadol (47 percent). The fourth highest percentage was for marijuana and ketamine (46 percent), followed by alcohol (43 percent), zolpidem (40 percent), hydrocodone (37 percent), illicit fentanyl (34 percent), benzodiazepines (32 percent), and cocaine (28 percent). HHS Basis for Rec. at 38.

Annual utilization-adjusted abuse case rates were calculated by dividing the number of PC abuse case counts by the prevalence of past-year use based on NSDUH estimates from people aged 12 years and older, for the period 2015 to 2019, for both (1) any past-year use of the substance and (2) past-year nonmedical use of the substance. These utilization-adjusted rates convey the likelihood that use of a drug will result in PC abuse cases when considering how many people use the drug for either (1) any reason or (2) nonmedical reasons. The utilization-adjusted abuse rates for any past-year use of a substance showed the highest rate for heroin (increasing from 4,038 to 7,201 cases per one million people). The next highest rates were for ketamine, cocaine, and benzodiazepines; all these rates were considerably lower than the rate for heroin. The rates for marijuana (relatively stable at 75 to 70 cases per one million people) and oxycodone were similar, as were the rates for alcohol, zolpidem, tramadol, and hydrocodone; all these rates were considerably lower than the rates for ketamine, cocaine, and benzodiazepines. A similar pattern of utilization-adjusted abuse rates was seen among cases involving a single substance only during the same time period. HHS Basis for Rec. at 39.

An analysis of medical outcomes related to exposure based on severity, timing, and assessment of clinical effects for all single-substance PC abuse cases involving marijuana or comparator drugs showed that serious medical outcomes (moderate effect, major effect, or death) were greatest for illicit fentanyl (81 percent) and heroin (79 percent), followed by oxycodone (70 percent), ketamine (64 percent), tramadol (62 percent), cocaine (59 percent), hydrocodone (44 percent), marijuana (41 percent), benzodiazepines (32 percent), alcohol (31 percent), and zolpidem (27 percent). HHS noted that death rates are underreported in NPDS, but HHS observed that the highest death rate was for fentanyl (25 percent); cocaine, heroin, and alcohol had comparatively very low death rates (3 percent, 2 percent, and 2 percent, respectively), with all other comparators reporting death rates of less than 1 percent. HHS Basis for Rec. at 39–40.

National Survey on Drug Use and Health

Data from NSDUH provide nationally representative information on the prevalence of substance use disorder (''SUD'') in 2021 among individuals aged 12 years or older who reported nonmedical use of marijuana in past year in comparison to heroin, cocaine, or alcohol use in the past year. A diagnosis of SUD is made when an individual endorses at least 2 of the 11 criteria for SUD according to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (''DSM–V''). Individuals are classified with a mild SUD if they meet two to three of the criteria, a moderate SUD if they meet four to five of the criteria, and a severe SUD if they meet six or more of the criteria. HHS Basis for Rec. at 40.

NSDUH data showed that, among individuals with past-year heroin use in 2021, there was an 81 percent prevalence of meeting the criteria for a heroin SUD. In comparison, there was a 30 percent prevalence of meeting the criteria for marijuana SUD among individuals who used marijuana for nonmedical reasons only (17 percent mild, 8 percent moderate, and 5 percent severe). For individuals who used marijuana for nonmedical purposes and did not use other drugs illicitly, there was a slightly lower prevalence (24 percent) of meeting the criteria for SUD (15 percent mild, 6 percent moderate, and 3 percent severe). For cocaine, 30 percent of individuals who used cocaine in the past year met criteria for cocaine SUD (13 percent mild, 5 percent moderate, and 12 percent severe). For individuals who used alcohol in the past year, the prevalence of alcohol SUD was 17 percent (10 percent mild, 4 percent moderate, and 3 percent severe). HHS Basis for Rec. at 40.

Although the 2021 NSDUH data showed that the likelihood of meeting the criteria for a SUD was highest for heroin, followed by marijuana, cocaine, and alcohol, the absolute number of individuals who met the criteria had a different order. Alcohol had the highest number of such individuals (approximately 29,544,000), followed by marijuana (approximately 13,078,000 people with marijuana nonmedical-only use, and approximately 7,454,000 with nonmedical-only use and no nonmedical use of other drugs), cocaine (approximately 1,408,000), and heroin (approximately 894,000). HHS Basis for Rec. at 40.

Treatment Episode Data Set

TEDS is a database run by SAMHSA within HHS that presents information on the demographic and substance use characteristics of annual admissions for treatment for alcohol and drug abuse in State-approved facilities that are required by the States to provide TEDS client-level data. Because TEDS is based only on reports from these facilities, TEDS data do not represent the total national demand for substance abuse treatment or the prevalence of substance abuse in the general population. HHS Basis for Rec. at 40–41.

Out of 1.4 million admissions documented in the 2020 TEDS dataset, the most frequently reported primary drug of admission was alcohol (31 percent, or 442,014 admissions), followed by heroin (21 percent, or 292,126 admissions), marijuana (10 percent, or 139,481 admissions), and cocaine (5 percent, or 71,725 admissions). Other comparator drugs were each reported as the primary drug in less than 2 percent of admissions. Over the reporting period of 2015 to 2020, the proportion of admissions each year ranged from 30 to 33 percent for alcohol; from 21 to 26 percent for heroin; from 10 to 14 percent for marijuana; and from 5 to 6 percent for cocaine. The proportion of admissions with marijuana as the primary drug declined each year from 14 percent in 2015 to a low of 10 percent in 2020,

while the proportion of admissions with cocaine as the primary drug increased slightly during this time from 5 percent in 2015 to 6 percent in 2019. During this reporting period, other comparator drugs were each reported as the primary drug in less than 2 percent of admissions each year. HHS Basis for Rec. at 41.

In 2020, marijuana and cocaine were most likely to be reported as the secondary drug at admission (25 percent and 24 percent, respectively), followed by alcohol (15 percent), heroin (8 percent), and benzodiazepines (6 percent), with all other comparators reported as less than 2 percent. For tertiary drugs at admission, marijuana (29 percent) was reported most frequently, followed by cocaine (18 percent), alcohol (16 percent), and heroin (5 percent), with all other comparators reported as less than 2 percent. HHS Basis for Rec. at 41.

National Addictions Vigilance Intervention and Prevention Program

NAVIPPRO is a surveillance system for substance use and nonmedical use of prescription medication in a convenience sample of adults seeking treatment or being assessed for SUD treatment at participating facilities across the United States. NAVIPPRO Addiction Severity Index-Multimedia Version (''ASI–MV'') is a clinical assessment tool that collects data on recent drug use behaviors for evaluation and treatment planning at intake. From 2020 through 2021, there were a total of 76,249 NAVIPPRO ASI–MV assessments in individuals entering or being assessed for SUD treatment at a center participating in the NAVIPPRO network. The drug most frequently endorsed for past-month use was marijuana (20,458 individuals, or 27 percent), followed by alcohol (5 or more alcoholic drinks per day, 16,388 individuals, or 22 percent), heroin (9,078 individuals, or 16 percent), fentanyl (6,186 individuals, or 8 percent), hydrocodone (3,448 individuals, or 5 percent), oxycodone (3,186 individuals, or 4 percent), cocaine or crack (5,417 individuals, or 7 percent), tramadol (543 individuals, or 1 percent), and ketamine (169 individuals, or less than 1 percent). HHS Basis for Rec. at 41.

Nationwide Emergency Department Sample

NEDS is the largest all-payer ED database in the United States, as developed for HHS's Agency for Healthcare Research and Quality (''AHRQ''). NEDS is a sample of records from ED visits from the State Emergency Department Databases, which capture discharge information on all ED visits that do not result in hospital admission, and the State Inpatient Databases, which contain information on patients first seen in the ED and then admitted. The 2020 ED sample covered 995 hospital EDs and 41 States; the unweighted 2020 sample contained data from over 28 million ED visits, which resulted in a weighted estimate of 123 million ED visits. HHS compared ED visits that noted an alcohol, marijuana, or cocaine-related disorder; this comparison included ED visits not directly due to a specific substance-related disorder, but in which the patient was recorded as having had an alcohol, marijuana, or cocaine-related disorder in the administrative claim associated with the visit. HHS Basis for Rec. at 42.

Based on NEDS data, from 2016 to 2020, the highest estimated number of annual ED visits was for an alcohol-related disorder, with between 4 million and 4.1 million visits each year, 3.2 million of which involved alcohol as a single substance. Over the same timeframe, estimated annual ED visits involving a marijuana-related disorder ranged from approximately 1.3 million to over 1.7 million, with the estimated annual ED visits for single-substance marijuana disorder ranging from 757,731 to 1.08 million. For cocaine, the estimated annual ED visits involving a related disorder were between 559,165 and 774,737, with annual visits for single-substance cocaine-related disorder ranging from 204,257 to 266,614. HHS Basis for Rec. at 42.

HHS calculated a utilization-adjusted rate of estimated ED visits, and the highest rate was for cocaine-related disorder, which ranged from 11,765 to 14,014 visits per 100,000 individuals, of which 4,011 to 4,952 were single-substance visits. Marijuana had the second-highest utilization-adjusted rate of estimated ED visits, ranging from 3,472 to 3,940 per 100,000 individuals 2,017 to 2,413 of which were single-substance visits. The utilization-adjusted rate of visits involving an alcohol disorder, the lowest of the three substances, ranged from 2,225 to 2,327 per 100,000 individuals, of which 1,775 to 1,843 were single-substance ED visits. HHS Basis for Rec. at 42–43.

National Inpatient Sample

NIS is the largest publicly available all-payer inpatient administrative health care database in the United States, and it is sponsored by AHRQ. It is a sample of discharges from participating community hospitals from 46 to 48 States and the District of Columbia each year, with approximately 7 million unweighted inpatient stays annually, accounting for weighted annual estimates of 35 million hospitalizations. HHS used NIS data to compare alcohol, marijuana, and cocaine. HHS Basis for Rec. at 43.

From 2016 to 2020, alcohol-related disorder had the highest estimated annual number of hospitalizations, at approximately 1.8 million each year, of which approximately 1.2 to 1.25 million involved single-substance alcohol-related disorder. Marijuana-related disorder had the second-highest estimated annual number of hospitalizations, increasing from 795,140 in 2016 to 914,810 in 2020, of which 373,160 to 452,985 were for single-substance marijuana-related disorder. Cocaine had the lowest estimated annual number of hospitalizations, ranging from 387,385 to 453,955, of which 94,695 to 112,725 were for single-substance cocaine-related disorder. HHS Basis for Rec. at 43.

HHS then calculated a utilization-adjusted rate of estimated hospitalizations, and the highest rate was for cocaine-related disorder, which ranged from 7,185 to 8,211 hospitalizations per 100,000 individuals with any past-year use, of which 1,796 to 2,039 were single-substance hospitalizations. Marijuana-related disorder had the second-highest rate of estimated hospitalizations, ranging from 1,850 to 2,117 per 100,000 individuals, of which 906 to 1,026 were single-substance hospitalizations. Alcohol had the lowest rate, ranging from 987 to 1,039 per 100,000 individuals, of which 675 to 715 were single-substance hospitalizations. HHS Basis for Rec. at 43.

National Forensic Laboratory Information System

NFLIS is a program of the Diversion Control Division of DEA. The NFLIS-Drug system is a component of the NFLIS that contains data that serve as a surveillance resource to monitor drug encounters by law enforcement across the United States, including data on drugs seized by law enforcement and submitted to Federal, State, and local forensic laboratories for analysis. In NFLIS, a law enforcement investigation (''case'') may result in one or more ''reports'' or ''exhibits'' of drug evidence, and each report or exhibit may contain one drug or multiple drugs. However, NFLIS-Drug data has limitations because not all drugs encountered by law enforcement are sent for analysis and not all drugs sent to reporting forensic laboratories are tested. To account for nonreporting

laboratories, among other things, DEA publishes NFLIS-Drug national report estimates annually and semiannually. Analyzing national estimates data allows for a comparison of the number of reports by year and reporting trends. In calculating national and regional estimates, DEA uses all NFLIS-Drug reporting laboratories. HHS Basis for Rec. at 43–44.

In 2021, there were 1,326,205 drug reports from State and local forensic laboratories in the United States, an increase of 3 percent from 2020. Nationally, 61 percent of all drug reports in NFLIS were identified as involving methamphetamine (406,200 reports or 31 percent), cannabis/THC (167,669 reports or 13 percent), cocaine (165,162 reports or 12 percent), or heroin (72,315 reports or 5 percent). HHS Basis for Rec. at 44–45.

In 2021, there were 1,027,219 drug-specific cases submitted to and analyzed by State and local laboratories, a 2 percent increase from 2020. Although the total NFLIS-Drug number of drug reports increased in 2021 from 2020, the total number of cases and drugs reported continues to be noticeably lower than the numbers reported for the years before the COVID–19 pandemic. Nationally, in 2021, 45 percent of all drug cases contained one or more reports of methamphetamine, followed by cocaine (18 percent), cannabis/THC (17 percent), and heroin (8 percent). Nationally, the number of cannabis/THC reports as well as the number of cases in which cannabis/THC was identified decreased from 2015 through 2021, including a decrease from 188,735 to 167,669 from 2020 to 2021. HHS noted that this could mean there was a decrease in the number of cannabis/THC encounters, but it could also mean that there was a decrease in the number of exhibits submitted by law enforcement for analysis or a decrease in the number of exhibits processed (analyzed) by forensic laboratories. HHS Basis for Rec. at 45.

HHS Conclusion With Respect to Factor 5

In HHS's view, the most notable conclusion from its evaluation of epidemiological databases related to the medical outcomes from drug abuse is that, for all evaluated measures from 2015 to 2020, the rank order of comparators in terms of greatest adverse consequences typically placed alcohol (unscheduled), heroin (schedule I), and cocaine (schedule II) in the first or immediately subsequent position, with marijuana in a lower position. This pattern also held for PC data for serious medical outcomes, including death, where marijuana was in the lowest ranking group. HHS determined that this demonstrated that there is consistency across databases, across substances, and over time, and that although abuse of marijuana produces clear evidence of harmful consequences, including SUD, the consequences are relatively less common and less harmful than some other comparator drugs. Additionally, HHS concluded, the number of law enforcement encounters with marijuana decreased from 2020 to 2021, at a time when law enforcement encounters were increasing for other scheduled drugs of abuse. However, as it noted with respect to Factor 1.A, HHS emphasized that there are limitations in comparing descriptive data on adverse outcomes across drugs, although descriptive analyses of epidemiologic data are an established practice in previous eight-factor analyses. HHS Basis for Rec. at 45.

In 2016, DEA found that abuse of marijuana is widespread and significant. 81 FR 53739. In addition, DEA found in 2016 that a significant proportion of all admissions for substance abuse treatment are for marijuana/hashish as the primary drug of abuse. *Id.* DEA notes that national data demonstrate that marijuana is one of the most widely used federally illicit substances in the United States, consistent with findings from the HHS Basis for Recommendation. According to the NSDUH, in 2022, among people aged 12 or older in the United States, an estimated 61.9 million people (22 percent) had used marijuana in the past year, and 42.3 million (15.0 percent) had used it in the past month. DEA notes that, according to one National Institutes of Health-supported study, the prevalence of daily marijuana use reached its highest level reported in 2021, at 11 percent of Americans aged 12 or older, a 3 percent increase from 2017 and a 5 percent increase from 2012.[27] It also notes that the average percentage of Δ9-THC in seized marijuana has increased over time.[28] Also, TEDS data showed that, in 2020, marijuana was the primary drug of admission in approximately 10 percent of all admissions to substance abuse treatment among patients aged 12 and older. HHS Basis for Rec. at 41, 46. DEA also notes that TEDS data for 2021 reported that marijuana/hashish was the primary substance of abuse in 10.2 percent of all admissions to substance abuse treatment among patients aged 12 and older.[29] The 2021 TEDS data further reported that New York, California, Georgia, North Carolina, New Jersey, Texas, Minnesota, South Carolina, Florida, and Connecticut accounted for 55.9 percent of admissions to substance use treatments services where marijuana/hashish was listed as the primary substance.[30] DEA also believes that additional information regarding the scope, duration, and significance of marijuana abuse may be appropriate for consideration in assessing this factor.

6. What, if Any, Risk There Is to the Public Health

The sixth factor that DOJ and HHS must consider under 21 U.S.C. 811(c) is the risk posed to the public health by marijuana. In analyzing this factor, HHS examined NSDUH data related to the demographics of U.S. individuals meeting criteria for marijuana use disorder, TEDS data related to the demographics of admission to treatment centers for marijuana use disorder, NEDS and NIS data on admissions to EDs and hospitals related to marijuana poisoning, ToxIC Core Registry data on intentional and unintentional exposure, and NPDS data describing the risks to youth of unintentional exposure to marijuana. HHS also assessed the risks to the public health through NSDUH data on driving under the influence of marijuana in adults and high school students. Finally, HHS reported data regarding the risk of serious AEs and death associated with nonmedical use/use of uncertain intent of marijuana as reported to the FDA Adverse Event Reporting System, Center for Food Safety and Applied Nutrition Adverse Event Reporting System, National Vital Statistics System-Mortality (''NVSS–M''), DAWN, FDA's Sentinel Distributed Database System, and Centers for Medicare and Medicaid Services, and as reflected in the Drug-Involved Mortality data linking NVSS–M to death certificates. HHS Basis for Rec. at 46.

HHS Conclusion With Respect to Factor 6

HHS's detailed analysis of the risks posed by marijuana to the public health

[27] *Marijuana and hallucinogen use among young adults reached all time-high in 2021,* Nat'l Inst. on Drug Abuse (Aug. 22, 2022), *https://nida.nih.gov/news-events/news-releases/2022/08/marijuana-and-hallucinogen-use-among-young-adults-reached-all-time-high-in-2021.*

[28] *Cannabis Potency Data,* Nat'l Inst. on Drug Abuse (Nov. 23, 2022), *https://nida.nih.gov/research/research-data-measures-resources/cannabis-potency-data.*

[29] Substance Abuse & Mental Health Servs. Admin., *Treatment Episode Data Set (TEDS) 2021: Admissions to and Discharges from Substance Use Treatment Services Reported by Single State Agencies* 10 (2023), *https://www.samhsa.gov/data/sites/default/files/reports/rpt42794/2021-teds-annual-report.pdf* (Figure 3.A.9).

[30] *Id.* at 29 (Figure 6.B.4).

can be found at pages 46–57 of the HHS Basis for Recommendation. In summary, HHS found that the risks to the public health posed by marijuana are low compared to other drugs of abuse (*e.g.,* heroin (schedule I), cocaine (schedule II)), based on its evaluation of various epidemiological databases for ED visits, hospitalizations, unintentional exposures, and, most importantly, for overdose deaths. The rank order of comparator drugs in terms of greatest adverse consequences typically places heroin, benzodiazepines, or cocaine in the first or immediately subsequent positions, with marijuana in a lower place in the ranking, especially when comparing among individuals who reported using the respective drugs at least once in the prior year. For overdose deaths, marijuana is always ranked the lowest among comparator drugs. HHS interpreted these evaluations to demonstrate that there is consistent evidence across databases, across substances, and over time that, although the abuse of marijuana poses a risk to public health, the risk is relatively lower than that posed by most other comparator drugs. However, as HHS noted in its discussion of Factor 1, *see* HHS Basis for Rec. at 7–8, there are limitations in comparing descriptive data on adverse outcomes across drugs. HHS Basis for Rec. at 57.

In 2016, DEA found that, ''[t]ogether with the health risks outlined in terms of pharmacological effects above, public health risks from acute use of marijuana include impaired psychomotor performance, impaired driving, and impaired performance on tests of learning and associative processes. Chronic use of marijuana poses a number of other risks to the public health including physical as well as psychological dependence.'' 81 FR 53739–40. In addition to the data provided in the HHS Basis for Recommendation and the data considered by HHS and DEA in their prior eight-factor analyses, DEA anticipates that additional data on public safety risks, risks from acute and chronic marijuana use via oral and inhaled administration routes, and the impact of Δ9-THC potency may be appropriate for consideration.

As discussed in the HHS Basis for Recommendation, DEA notes that studies have examined the risk associated with marijuana use and driving. HHS Basis for Rec. at 50. The Rocky Mountain High Intensity Drug Trafficking Area reported in a publication that traffic deaths in Colorado in which drivers tested positive for marijuana more than doubled from 55 in 2013 to 131 in 2020, although other evidence in the same report suggests that driving under the influence citations involving marijuana have grown at a rate similar to the rate for citations involving other drugs.[31] DEA also identified some evidence suggesting that, among drivers who test positive for at least one drug in a traffic stop, a growing share test positive for cannabis.[32]

7. Marijuana's Psychic or Physiological Dependence Liability

The seventh factor that DOJ and HHS are required to consider under 21 U.S.C. 811(c) is the psychic or physiologic dependence liability of marijuana.

A. Psychic Dependence

The term ''psychic or psychological dependence'' has been used to refer to a state similar to addiction. For diagnosis purposes, the DSM–V has combined the diagnoses ''abuse'' and ''drug dependence'' (*i.e.,* addiction), which the DSM's Fourth Edition specified separately, into a single ''substance use disorder,'' which may occur in a broad range of severity, from mild to severe. HHS Basis for Rec. at 57.

The abuse potential of a drug can be assessed, in part, by evaluating the rewarding effects produced by that drug in humans and animals. As HHS described in its analysis of Factor 2, *see* HHS Basis for Rec. at 12–13, rodent behavioral studies show that Δ9-THC produces both self-administration and CPP. HHS determined that these results demonstrate that Δ9-THC has rewarding properties that are indicative of abuse potential. Further, as HHS described in its analysis of Factor 4, *see* HHS Basis for Rec. at 32–37, there is ample epidemiological evidence that marijuana is self-administered by humans, which may result from its ability to produce rewarding psychological effects, such as euphoria, *see* HHS Basis for Rec. at 15. HHS Basis for Rec. at 58.

In some individuals, extensive use of marijuana can lead to SUD. HHS noted that, in general, SUDs listed in the DSM–V are defined by an inability to cease drug use despite harmful consequences; Cannabis Use Disorder (''CUD'') shares this and other diagnostic criteria common to SUDs for other drugs of abuse. Estimates of CUD in individuals who regularly use marijuana vary and range from about 10 to 20 percent. These estimates are similar to data from the United States National Comorbidity Study, which showed that 9 percent of lifetime cannabis users met the criteria for dependence outlined in the DSM's revised Third Edition at some time in their life, compared to 32 percent of tobacco users, 23 percent of opiate users, and 15 percent of alcohol users. The National Epidemiologic Survey on Alcohol and Related Conditions also reported a nine percent lifetime cumulative probability of transitioning from marijuana use to dependence, with a higher risk of dependence in individuals with a history of psychiatric or other substance dependence comorbidity. In the United States, data from the 2020 NSDUH show that approximately 14 million individuals aged 12 or older who use marijuana or other cannabinoid preparations met criteria for CUD, representing 5.1 percent of all individuals aged 12 or older meeting the NSDUH survey inclusion criteria. HHS Basis for Rec. at 58.

Individuals who develop a SUD, including CUD, may seek treatment. From 2015 to 2020, TEDS documented approximately 10.8 million treatment episode admissions reported by individuals treated at publicly funded substance use treatment programs. Out of 1.4 million treatment admissions documented by TEDS in 2020, marijuana was reported as the primary substance of abuse in approximately 10 percent of admissions, making it the third most frequently reported primary substance of abuse, after alcohol (31.2 percent) and heroin (20.6 percent). A similar pattern was seen from 2015 to 2019. HHS Basis for Rec. at 58.

HHS concluded that the animal behavioral data show that Δ9-THC produces rewarding properties that underlie the abuse potential of marijuana. Epidemiological data demonstrate that some individuals who use marijuana for its rewarding properties go on to develop CUD, which shows that marijuana can produce psychological dependence. Among those individuals who seek admission for treatment for SUD associated with a drug of abuse, marijuana was the third most frequently reported primary substance of abuse. Thus, marijuana can produce psychic dependence in some individuals who use the drug. HHS Basis for Rec. at 58–59.

B. Physical Dependence

Physical dependence is a state of adaptation manifested by a drug-class

[31] *See* 8 Rocky Mountain High Intensity Drug Trafficking Area, *The Legalization of Marijuana in Colorado: The Impact* 8, 13 (2021), *https://www.rmhidta.org/_files/ugd/4a67c3_b391ac360f974a8bbf868d2e3e25df3d.pdf.* Note that the publication did not address the timing of marijuana use associated with fatal traffic accidents.

[32] *See* Fernando A. Wilson et al., *Fatal Crashes from Drivers Testing Positive for Drugs, 1993–2010,* 129 Public Health Reports 342, 347–348 (2014).

specific withdrawal syndrome produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. Although physical dependence is often associated with addiction, it can be produced by repeated administration of drugs both with and without abuse potential. HHS Basis for Rec. at 59.

As HHS discussed in its analysis of Factor 2, *see* HHS Basis for Rec. at 11, Δ9-THC is a partial agonist at CB_1 receptors. When marijuana (or isolated Δ9-THC) is administered chronically, there is a down-regulation of CB_1 receptors, which leads to behavioral tolerance. The underlying mechanism for marijuana withdrawal appears to be the uncoupling or desensitization of CB_1 receptors that precedes receptor down-regulation. Abrupt discontinuation of marijuana after prolonged administration produces withdrawal symptoms in rats and in humans that are typically opposite to those that occur with activation of the CB_1 receptor. Precipitated withdrawal can also be induced with administration of CB_1 antagonists following chronic administration, while administration of CB_1 agonists can attenuate some withdrawal symptoms associated with marijuana discontinuation. These data confirm the importance of the CB_1 receptor in marijuana physical dependence. HHS Basis for Rec. at 59.

HHS noted that research has not yet documented the occurrence of withdrawal symptoms in individuals who use marijuana only occasionally. However, in individuals who use marijuana heavily and chronically, drug discontinuation can lead to a withdrawal syndrome. Most marijuana withdrawal symptoms begin within 24 to 48 hours of drug discontinuation, peak within two to six days, and reduce over one to two weeks as Δ9-THC levels decline. HHS Basis for Rec. at 59.

The most commonly reported withdrawal symptoms from clinical investigations are sleep difficulties, decreased appetite and weight loss, craving, irritability, anger, anxiety or nervousness, and restlessness. Less commonly reported withdrawal symptoms include depressed mood, sweating, shakiness, physical discomfort, and chills. HHS described the symptoms of ''cannabis withdrawal'' listed in the DSM–V as being similar to those reported in the experimental studies, including nervousness or anxiety, irritability or aggression, insomnia or unpleasant dreams, depressed mood, decreased appetite or weight loss, restlessness, abdominal pain, shakiness or tremors, sweating, fever, chills, and headache. HHS Basis for Rec. at 59–60.

HHS reported that up to 40 to 50 percent of individuals who use marijuana on a regular basis may experience physical dependence. A meta-analysis of 23,518 individuals who frequently used marijuana showed that 47 percent of subjects reported symptoms of marijuana withdrawal. The prevalence of physical dependence was 54 percent in outpatient samples, 17 percent in community samples, and 87 percent among inpatients in drug abuse treatment centers. This is consistent with data showing that 90 percent of individuals who were diagnosed with CUD also reported physical dependence. Further, individuals diagnosed with CUD experience more severe and longer lasting withdrawal symptoms when discontinuing marijuana than individuals who do not have a diagnosis of CUD. This may be because individuals with CUD have greater exposure to marijuana. HHS Basis for Rec. at 60.

Symptoms associated with marijuana withdrawal appear to be relatively mild compared to those associated with alcohol withdrawal, which can include agitation, paranoia, seizures, and even death. Multiple studies comparing the withdrawal symptoms associated with tobacco (not scheduled in the CSA) and marijuana demonstrate that the magnitude and time course of the two withdrawal syndromes are similar. Animal studies have shown that after short-term administration of equianalgesic doses of heroin and Δ9-THC to monkeys, withdrawal signs were observed after heroin administration but not after Δ9-THC administration, further demonstrating that withdrawal from marijuana is associated with less severe symptoms than withdrawal from other drug classes. HHS Basis for Rec. at 60.

HHS Conclusion With Respect to Factor 7

In conclusion, HHS found experimental and clinical evidence that chronic, but not acute, use of marijuana can produce both psychic and physical dependence in humans. Epidemiological data, discussed in greater detail in the sections describing Factors 4 and 5 in sections VI.4 and VI.5 of this preamble, provide additional evidence of psychic dependence. The symptoms associated with both kinds of dependence are relatively mild for most individuals, although their severity may be greater with increased exposure to marijuana. HHS Basis for Rec. at 61.

In 2016, DEA found that ''[l]ong-term, heavy use of marijuana can lead to physical dependence and withdrawal following discontinuation, as well as psychic or psychological dependence.'' 81 FR 53740. DEA notes that some physicians have argued that CUD is underdiagnosed and undertreated in the medical setting,[33] and that other medical professionals have noted that CUD needs to be better understood and characterized to better inform users and treatment professionals.[34] DEA anticipates that additional psychic or physiological dependence liability may be appropriate for consideration.

8. Whether Marijuana Is an Immediate Precursor of a Substance Already Controlled Under the CSA

The eighth factor that DOJ and HHS are required to consider under 21 U.S.C. 811(c) is whether marijuana is an immediate precursor of a substance already controlled under the CSA. HHS concluded that marijuana is not an immediate precursor of another controlled substance. HHS Basis for Rec. at 61. This finding is consistent with DEA's finding in 2016. 81 FR 53740. DEA welcomes additional information on this factor.

VII. Determination of Appropriate Schedule for Marijuana

After conducting the eight-factor analysis in 2023, HHS has recommended three findings regarding the appropriate schedule in which to place marijuana. The three findings relate to: (1) a substance's abuse potential; (2) whether the substance has a CAMU; and (3) the safety or dependence potential of the substance. 21 U.S.C. 812(b); HHS Basis for Rec. at 62–65.

1. Potential for Abuse

In 2016, HHS found that many factors indicated marijuana's high abuse potential, ''including the large number of individuals regularly using marijuana, marijuana's widespread use, and the vast amount of marijuana available for illicit use.'' 81 FR 53688 at 53706. As a result of its most recent evaluation, which incorporates post-2016 data into its analysis, HHS has recommended a finding that marijuana has a potential for abuse less than the drugs or other substances in schedules I and II.

[33] *See, e.g.,* Theresa A. Matson et al., *Association Between Cannabis Use Disorder Symptom Severity and Probability of Clinically-Documented Diagnosis and Treatment in a Primary Care Sample,* 251 Drug & Alcohol Dependence, no. 110946, 2023.

[34] *See, e.g.,* Gwen T. Lapham et al., *Prevalence of Cannabis Use Disorder and Reasons for Use Among Adults in a U.S. State Where Recreational Cannabis Use is Legal,* 6 JAMA Open no. e2328934, 2023, at 7.

Marijuana contains Δ9-THC (also known as dronabinol when specifically referring to *(-)-trans*-Δ9-THC stereoisomer), the substance responsible for the abuse potential of marijuana. Δ9-THC has agonist properties at CB_1 cannabinoid receptors and produces rewarding responses in animals, as evidenced by its ability to produce self-administration and CPP. When marijuana is administered to humans under experimental conditions, it produces a wide range of positive subjective responses in addition to certain negative subjective responses. Common responses to marijuana when it is used by individuals for nonmedical purposes include euphoria and other positive subjective responses, as well as perceptual changes, sedative responses, anxiety responses, psychiatric, social, and cognitive changes, and physiological changes. HHS Basis for Rec. at 62.

HHS noted that epidemiological data from NSDUH show that marijuana is the most frequently used federally illicit drug in the United States on a past-year and past-month basis among the illicit comparator drugs considered. Although 50 percent of respondents in NSDUH reported using marijuana nonmedically fewer than 5 days per month, another 30 percent reported using it nonmedically for 20 days or more per month. HHS Basis for Rec. at 62.

Despite the high prevalence of nonmedical use of marijuana, HHS observed that an overall evaluation of epidemiological indicators suggests that it does not produce serious outcomes compared to drugs in schedules I or II. HHS found this especially notable given the availability of marijuana and marijuana-derived products that contain extremely high levels of Δ9-THC. Due to such availability, the epidemiological data described in HHS's evaluation inherently include the outcomes from individuals who use marijuana and marijuana-derived products that have doses of Δ9-THC that range from low to very high, and yet the data demonstrate that these products overall are producing fewer negative outcomes than drugs in schedules I or II. HHS Basis for Rec. at 62.

HHS compared the rank ordering of selected drugs that are abused for various epidemiological measures and observed that marijuana was among the drugs at the very lowest ranking for a number of measures, including PC abuse cases, likelihood that any use would lead to a PC call, accidental or unintentional poisoning, utilization-adjusted rates of unintentional exposure, utilization-adjusted and population-adjusted rates for ED visits and hospitalizations, likelihood of being diagnosed with a serious SUD, deaths reported to PCs, and overdose deaths when used with other drugs or as a single substance (as total numbers and when utilization-adjusted). In contrast, comparators such as heroin (schedule I), oxycodone (schedule II), and cocaine (schedule II) typically were in the highest rank ordering on these measures. HHS Basis for Rec. at 62.

For the various epidemiological measures evaluated above, HHS noted that marijuana was also compared to controlled substances in schedule III (ketamine) and schedule IV (benzodiazepines, zolpidem, and tramadol), as well as to other schedule II substances (fentanyl and hydrocodone). The analyses were conducted in this manner to provide a comprehensive assessment of the relative abuse potential of marijuana. However, the rank order of these substances regarding harms does not consistently align with the relative scheduling placement of these drugs in the CSA due to the pharmacological differences between various classes of drugs. HHS Basis for Rec. at 63.

There are a number of confounding factors that likely influence the adverse outcomes measured in various epidemiological databases and account for the rank ordering of the drugs evaluated on these measures. For example, a different population abuses each substance, and each substance has a different prevalence of abuse and a different profile of severe adverse outcomes in a setting of nonmedical use and abuse. Thus, it is challenging to reconcile the ranking of relative harms associated with the comparators used in this evaluation when the rankings differ across various epidemiological databases and when these rankings often do not align with the scheduling placement of these comparators under the CSA. HHS Basis for Rec. at 63.

To address these challenges, HHS evaluated the totality of the available data and has concluded that it supports the placement of marijuana in schedule III. Overall, these data demonstrate that, although marijuana is associated with a high prevalence of abuse, the profile of and propensity for serious outcomes related to that abuse lead to a conclusion that marijuana is most appropriately controlled in schedule III under the CSA. HHS Basis for Rec. at 63.

The Attorney General has considered HHS's recommendations and conclusions and accords HHS's scientific and medical determinations binding weight at this stage of the scheduling process. *See* OLC Op. at *22 n.6 (''HHS's recommendations with respect to 'scientific and medical matters' are binding for all eight factors listed in section 811(c).''). The Attorney General concurs with HHS's recommendation, for purposes of initiation of these rulemaking proceedings, that marijuana has a potential for abuse less than the drugs or other substances in schedules I and II.

2. Currently Accepted Medical Use in Treatment in the United States

In 2016, HHS recommended a finding that marijuana had no CAMU due in part to a lack of adequate safety studies or evidence that qualified experts accepted marijuana for use in treating a specific, recognized disorder. 81 FR 53688 at 53707. As a result of its most recent evaluation, which incorporates post-2016 data into its analysis, HHS recommends a finding that marijuana has a CAMU.

In making that recommendation, HHS analyzed whether there is (1) widespread current experience with medical use of the substance in the United States by licensed health care practitioners operating in accordance with implemented State-authorized programs, where the medical use is recognized by entities that regulate the practice of medicine; and (2) some credible scientific support for a least one of those medical uses. Applying this test, HHS recommended a finding that marijuana has a currently accepted medical use in the United States, specifically for the treatment of anorexia related to a medical condition, nausea and vomiting (*e.g.,* chemotherapy-induced), and pain. According to HHS, its evaluation also supported a finding that there is accepted safety for the use of marijuana under medical supervision for the treatment of anorexia related to a medical condition, nausea and vomiting (*e.g.,* chemotherapy-induced), and pain. HHS Basis for Rec. at 63–64.

In the past, DEA has concluded that a substance has a CAMU under the CSA only if one of two tests is satisfied. First, DEA has determined that a substance has a CAMU if the substance has been approved by FDA for marketing under the FDCA, either through the NDA process or by meeting the criteria to be recognized as a ''Generally Recognized As Safe and Effective'' (''GRASE'') drug. 57 FR 10499, 10503 (March 26, 1992). Second, DEA has determined a substance has a CAMU if the substance satisfies a five-part test established by DEA in 1992 that was based on the ''core FDCA standards for acceptance of drugs for medical use'':

1. There must be adequate safety studies;
2. The drug's chemistry must be known and reproducible;
3. There must be adequate and well-controlled studies proving efficacy;
4. The drug must be accepted by qualified experts; and
5. The scientific evidence must be widely available.

57 FR 10499, 10503–06 (1992); *see also All. for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

In its most recent evaluation, HHS informed DEA of its view that DEA's previous approach to determining whether a drug has a CAMU does not adequately account for certain indicia of medical use that, where present, are relevant to determining whether a substance has a CAMU for purposes of scheduling under the CSA. Specifically, HHS observed that DEA's tests left no room for an evaluation of (1) whether there is widespread medical use of a drug under the supervision of licensed health care practitioners under State-authorized programs and, (2) if so, whether there is credible scientific evidence supporting such medical use. HHS therefore developed an alternative test composed of those two inquiries as a third, independently sufficient approach for determining whether a substance has a CAMU under the CSA. HHS applied this two-part test to marijuana and recommended a finding that marijuana has a CAMU under the CSA. HHS Basis for Rec. at 24–28.

Upon receiving HHS's recommendation, the Attorney General requested that OLC advise on whether HHS's test, if satisfied, established a CAMU ''even if the drug has not been approved by FDA and even if the drug does not satisfy DEA's five-part test.'' OLC Op. at *3. OLC determined that DEA's current approach to determining whether a drug has a CAMU is impermissibly narrow, because it ''ignor[es] widespread clinical experience with a drug that is sanctioned by state medical licensing regulators.'' *Id.* at *13–14; *see also id.* at *12. OLC further opined that satisfying HHS's two-part inquiry is sufficient to establish that a drug has a CAMU. *Id.* at *4, *16–20. And OLC concluded that, while HHS's CAMU recommendation is not binding on DEA, the medical and scientific determinations that underlie its recommendation are binding until the initiation of formal rulemaking proceedings, and that DEA must accord those determinations ''significant deference'' throughout the rulemaking process. *Id.* at *4, *20–26.

Under Part 1 of the HHS CAMU test, the Office of the Assistant Secretary for Health (''OASH'') considered whether there is widespread current experience with medical use of marijuana in the United States by licensed HCPs operating in accordance with implemented State-authorized programs, where such medical use is recognized by entities that regulate the practice of medicine under these State jurisdictions. Part 2 of the CAMU test evaluated whether there exists some credible scientific support for at least one of the medical conditions for which the Part 1 test is satisfied. The evaluation in Part 2, undertaken by FDA, was not meant to be, nor is it, a determination of safety and efficacy under the Federal Food, Drug, and Cosmetic Act's drug approval standard for new human or animal drugs. Rather, HHS's two-part test is designed to evaluate whether a substance, in this case marijuana, has a CAMU for purposes of drug scheduling recommendations and placement in a drug schedule consistent with criteria set forth in 21 U.S.C. 812(b). HHS Basis for Rec. at 24.

In the evaluation and assessment under Part 1 of the CAMU test, OASH found that more than 30,000 HCPs are authorized to recommend the use of marijuana for more than six million registered patients, constituting widespread clinical experience associated with various medical conditions recognized by a substantial number of jurisdictions across the United States. For several jurisdictions, these programs have been in place for several years, and include features that actively monitor medical use and product quality characteristics of marijuana dispensed. HHS Basis for Rec. at 24.

Based on OASH's findings in Part 1 of the CAMU test, the Assistant Secretary for Health concluded that an FDA assessment under Part 2 of the CAMU test was warranted to determine if credible scientific support exists for the use of marijuana to treat at least one of the medical conditions identified by OASH under Part 1. HHS Basis for Rec. at 24.

At this stage of initiating a rulemaking, the Attorney General agrees with OASH that there is widespread clinical experience with marijuana for at least one medical condition.

FDA conducted Part 2 of the CAMU test for seven indications, based in part on OASH's findings under Part 1 of the CAMU test [35] and in part on FDA's own analysis of the landscape in which marijuana is currently used medically, including information from State-authorized programs on how and to what extent marijuana is being utilized for medical purposes. The seven indications are: (1) anorexia; [36] (2) anxiety; [37] (3) epilepsy; (4) inflammatory bowel disease (''IBD''); (5) nausea and vomiting; (6) pain; and (7) post-traumatic stress disorder (''PTSD''). FDA's evaluation under Part 2 of the CAMU test was based on systematic reviews of studies investigating the safety and effectiveness of marijuana, relevant professional societies' position statements, data from State medical marijuana programs and United States national surveys, and the labeling of FDA-approved products relevant to the analysis. HHS Basis for Rec. at 25.

In evaluating whether there exists some credible scientific support under Part 2 of the CAMU test for a particular use, factors in favor of a positive finding included whether: (1) favorable clinical studies of the medical use of marijuana, although not necessarily adequate and well-controlled clinical studies that would support approval of an NDA, have been published in peer-reviewed journals or (2) qualified expert organizations (*e.g.,* academic groups, professional societies, or government agencies) have opined in favor of the medical use or provided guidance to HCPs on the medical use. Factors that weigh against a finding that Part 2 of the CAMU test is met included whether: (1) data or information indicate that medical use of the substance is associated with unacceptably high

[35] In Part 1 of the CAMU test, OASH identified at least 15 medical conditions for which there is widespread current experience with medical use of marijuana in the United States by licensed HCPs operating in accordance with implemented State-authorized programs, where the medical use is recognized by entities that regulate the practice of medicine. These conditions include amyotrophic lateral sclerosis (commonly known as ALSI), autism, cachexia, cancer, chronic pain, Crohn's disease, epilepsy or condition causing seizures, glaucoma, HIV/AIDS, multiple sclerosis, Parkinson's disease, persistent/severe muscle spasm, persistent/severe nausea, PTSD, and spasticity. FDA conducted Part 2 of the analysis for the medical conditions identified by OASH that were likely to have the most robust evidence available for review; because the analysis concluded that the Part 2 test has been met for at least one of the conditions identified in Part 1, there was no need to analyze all of them. HHS Basis for Rec. at 25 n.9.

[36] The anorexia indication reflects anorexia due to a medical condition (*e.g.,* HIV/AIDS) and does not represent anorexia nervosa. HHS Basis for Rec. at 25 n.10.

[37] While anxiety was not one of the specific medical conditions identified by OASH, it is included herein because anxiety was identified by the FDA during the Part 2 review of State-level usage data. FDA considered the medical use of marijuana for the treatment of anxiety of importance to evaluate given the reported prevalence of marijuana use for the treatment of anxiety regardless of the legal status of such use in a given jurisdiction. HHS Basis for Rec. at 25 n.11.

safety risks for the likely patient population, *e.g.,* due to toxicity concerns; (2) clinical studies with negative efficacy findings for the medical use of marijuana have been published in peer reviewed journals; or (3) qualified expert organizations (*e.g.,* academic or professional societies, government agencies) recommend against the medical use of marijuana based on the available data at the time of their position statement. HHS Basis for Rec. at 25.

FDA's review of the available information identified mixed findings of effectiveness across indications, ranging from data showing inconclusive findings to considerable evidence in favor of effectiveness, depending on the source. The largest evidence base for effectiveness exists for marijuana use within the pain indication (in particular, neuropathic pain). Numerous systematic reviews concluded that there exists some level of evidence supporting the use of marijuana for chronic pain. The 2017 NASEM report concluded there was ''substantial evidence'' [38] supporting the use of cannabis products relevant to this review for pain, as have other reviews. The AHRQ living systematic review has concluded that there is some support for the use of marijuana-related products in the treatment of chronic pain, but overall concluded these effects were small and the increased risk of dizziness, nausea, and sedation may limit the benefit. A systematic review of scientific and medical literature was conducted in 2023 by the University of Florida (''UF'') under contract with FDA. UF epidemiologists identified some data supporting effectiveness of marijuana, including some within their own meta-analysis; however, they ultimately concluded the results are inconclusive or mixed. FDA also conducted a separate analysis of published scientific reviews, several of which drew conclusions similar to those of UF. HHS Basis for Rec. at 25–26.

UF evaluated other therapeutic conditions mentioned above, *i.e.,* anorexia, anxiety, epilepsy, IBD, nausea, and PTSD, employing a similar systematic review of scientific and medical literature. UF found that there is low- to moderate-quality evidence supporting the use of marijuana as medical treatment for outcomes in anorexia, nausea and vomiting, and PTSD. FDA's review of systematic reviews showed mixed results for these indications. In particular, FDA found that the potential for psychiatric adverse events associated with treating PTSD with marijuana may be more substantial than any limited benefit in observational studies. Although UF did not conclude that there was evidence in support of the effectiveness of marijuana in IBD, both their review and other systematic reviews found some benefit with respect to subjective symptoms in this condition. With regard to epilepsy and anxiety, both UF's review and FDA's review of other systematic reviews did not find support for marijuana providing benefit in the treatment of these conditions. Where positive results on effectiveness outcome measures were found, the effects and the quality of evidence were generally in the low-to-moderate range. UF did not find high quality evidence supporting worsening of outcomes in any indication. HHS Basis for Rec. at 26.

FDA concluded that none of the evidence from the systematic reviews included in the CAMU test Part 2 analysis identified any safety concerns that would preclude the use of marijuana in the indications for which there exists some credible scientific support for its therapeutic benefit. FDA assessed the clinical safety data identified in the literature from controlled trials as generally consistent between sources but limited in the rigor of safety reporting. FDA also explained that the vast majority of the observational studies evaluated in the context of medical use were excluded from the final synthesis of evidence due to concerns regarding their quality (*e.g.,* only one observational study for the anxiety indication and one for the PTSD indication were included). According to FDA, data on safety from both clinical trials and observational studies were generally scarce, but the literature shows that marijuana has more AEs when compared to a placebo or active control group, however, typically in the mild to moderate severity range. HHS Basis for Rec. at 26.

FDA also reviewed results from State reporting data from 37 States with medical marijuana programs and surveys of patients using marijuana in Maryland and Minnesota, which had data available for review. Surveys of patients using marijuana in these two States found most patients did not report any side effects and those that did report side effects mostly described them as mild. Neither State's databases included patients who chose to stop using marijuana, which FDA noted might result in an overestimation of positive experiences. HHS Basis for Rec. at 27.

As of August 2023, FDA reported that the real-world data sources available to FDA, in general, lack the necessary elements to identify the exposure (*i.e.,* to marijuana), to distinguish the reason for use (medical vs. recreational) and, if applicable, the condition that prompted its medical use, and to permit sound inferential analyses. Therefore, they were not included in HHS's review. HHS Basis for Rec. at 27.

According to FDA, data from United States national surveys, in general, lacked details on patient characteristics and factors that prompted the use of marijuana for medical purposes, and data collection for these surveys was impacted by the COVID–19 pandemic. FDA observed that, despite these limitations, the data suggested that medical use of marijuana increases as age increases. Only data from one survey provided information on the intended indication for use, suggesting that individuals often use marijuana to improve or manage conditions such as depression, anxiety, PTSD, pain, headaches or migraines, sleep disorders, nausea and vomiting, lack of appetite, and muscle spasms, but only approximately half of them reportedly had ever asked a health care professional for a recommendation to use medical marijuana. HHS Basis for Rec. at 27.

Additionally, although the safety data obtained from use in a medical context are considered to be the most relevant for the CAMU analysis, FDA evaluated the safety of marijuana in the nonmedical setting to inform the potential for more severe outcomes. Specifically, FDA evaluated safety outcomes related to marijuana use in the setting of nonmedical use, use of uncertain intent, and unintentional exposure through a variety of epidemiological data sources and in relation to several comparator substances controlled under the CSA, including drugs in schedule I: heroin (an illicit opioid drug); schedule II: hydrocodone and oxycodone (approved opioid prescription drug products), cocaine and fentanyl (largely illicitly produced drugs in the nonmedical use setting, although there are approved prescription drugs); schedule III: ketamine (an approved prescription drug); and schedule IV: zolpidem, benzodiazepines, and tramadol (approved prescription drugs). According to FDA, the comparative data demonstrate that, even in the context of nonmedical use, marijuana has a less concerning overall safety profile relative to the comparators for a number of important outcomes (*e.g.,* single substance use overdose death,

[38] The term ''substantial evidence'' refers to language used within the 2017 NASEM report and is not meant to represent ''substantial evidence'' as defined in 21 U.S.C. 355(d). HHS Basis for Rec. at 26 n.12.

hospitalizations). However, FDA observed that in young children, population-adjusted rates of ED visits and hospitalizations involving marijuana poisoning were higher than heroin, cocaine, and benzodiazepines for the periods studied. Of note, some of the comparator substances are approved for use in conditions similar to the indications for which marijuana was evaluated in the CAMU analysis (*e.g.,* opioids for pain, benzodiazepines for anxiety-related conditions). HHS Basis for Rec. at 27.

FDA also considered position statements from professional organizations relevant to the indications discussed. The vast majority of professional organizations did not recommend the use of marijuana in their respective specialties; however, none specifically recommended against it, with the exception of the American Psychiatric Association, which stated that marijuana is known to worsen certain psychiatric conditions. HHS Basis for Rec. at 27–28.

On balance, FDA found the available data indicated that there is some credible scientific support for the use of marijuana in the treatment of chronic pain, anorexia related to a medical condition, and nausea and vomiting, with varying degrees of support and consistency of findings. Additionally, no safety concerns were identified in FDA's review that would indicate that medical use of marijuana poses unacceptably high safety risks for the indications where there is some credible scientific evidence supporting its therapeutic use. HHS Basis for Rec. at 28.

Based on the totality of the available data, FDA concluded that there exists some credible scientific support for the medical use of marijuana in at least one of the indications for which there is widespread current experience in the United States, as identified by OASH under Part 1 of the CAMU test. The indications evaluated were anorexia related to a medical condition, anxiety, epilepsy, IBD, nausea and vomiting (*e.g.,* chemotherapy-induced), pain, and PTSD. FDA clarified that the analysis and conclusions on the available data are not meant to imply that safety and effectiveness have been established for marijuana that would support FDA approval of a marijuana drug product for a particular indication. However, FDA determined that the available data do provide some level of support for the way marijuana is being recommended by health care practitioners in clinical practice. Thus, based on the widespread HCP experience and the extent of medical use evaluated by OASH under the Part 1 test, and FDA's evaluation of available credible scientific support described herein for at least some therapeutic uses identified in the Part 1 test, HHS recommended a finding that, for purposes of the drug scheduling criteria in 21 U.S.C. 812(b), marijuana has a CAMU for: anorexia related to a medical condition; nausea and vomiting (*e.g.,* chemotherapy-induced); and pain. HHS Basis for Rec. at 28.

The Attorney General has considered HHS's recommendations and conclusions and accords HHS's scientific and medical determinations binding weight until the initiation of the formal rulemaking process. *See* OLC Op. at *24. Applying HHS's two-part test, and in light of OLC's legal opinion that the HHS's test is sufficient under the CSA, the Attorney General concurs with HHS's conclusion, for purposes of the initiation of these rulemaking proceedings, that there is a CAMU for marijuana.

3. Level of Physical or Psychological Dependence

As a result of its most recent evaluation, which incorporates post-2016 data into its analysis, HHS has recommended a finding that abuse of marijuana may lead to moderate or low physical dependence or high psychological dependence. HHS Basis for Rec. at 65.

According to HHS, clinical studies have demonstrated that marijuana produces physical and psychological dependence. Regarding physical dependence, as evidenced by its associated withdrawal symptomology upon abrupt discontinuation of use, the most commonly reported marijuana withdrawal symptoms in clinical investigations are sleep difficulties, decreased appetite and weight loss, craving, irritability, anger, anxiety or nervousness, and restlessness. Marijuana withdrawal symptoms typically peak within two to six days and decline over one to two weeks as Δ9-THC is eliminated. Similarly, the drug labels for the FDA-approved drug products Marinol and Syndros state that, following chronic administration of dronabinol, drug discontinuation leads to irritability, insomnia, and restlessness at 12 hours, and by 24 hours the withdrawal symptoms can include hot flashes, sweating, rhinorrhea, diarrhea, and anorexia. HHS Basis for Rec. at 64.

HHS observes that marijuana withdrawal syndrome has been reported in individuals with heavy, chronic marijuana use, but its occurrence in occasional users of marijuana has not been established. The marijuana withdrawal syndrome appears to be relatively mild compared to the withdrawal syndrome associated with alcohol, which can include more serious symptoms such as agitation, paranoia, seizures and even death. Multiple studies comparing the withdrawal symptoms associated with marijuana and tobacco demonstrate that the magnitude and time course of the two withdrawal syndromes are similar. HHS Basis for Rec. at 64.

HHS also notes that the ability of marijuana to produce psychic dependence is shown through its ability to produce rewarding effects that underlie its nonmedical use and epidemiological outcomes related to abuse, as detailed in the first finding on abuse potential. HHS Basis for Rec. at 64–65.

Based on the evidence, HHS determined that the abuse of marijuana may lead to moderate or low physical dependence, depending on frequency and degree of marijuana exposure. HHS further concluded that marijuana can produce psychic dependence in some individuals, but that the likelihood of serious outcomes is low, suggesting that high psychological dependence does not occur in most individuals who use marijuana. HHS Basis for Rec. at 65.

The Attorney General has considered HHS's recommendations and conclusions and accords HHS's scientific and medical determinations binding weight at this stage of the scheduling process. *See* OLC Op. at *22 n.6. For purposes of the initiation of these rulemaking proceedings, the Attorney General concurs with HHS's conclusion that the abuse of marijuana may lead to moderate or low physical dependence, depending on frequency and degree of marijuana exposure.

Determination To Propose Rescheduling Marijuana to Schedule III

HHS has recommended a finding that marijuana has a CAMU. HHS Basis for Rec. at 63–64. After considering the foregoing facts and data and the recommendation of HHS, and after according binding weight to HHS's scientific and medical determinations, the Attorney General concludes that there is, at present, substantial evidence that marijuana does not warrant control under schedule I of the CSA. Accordingly, the Attorney General is issuing this notice of proposed rulemaking to initiate rulemaking proceedings to reschedule marijuana. 21 U.S.C. 811(b).

HHS has recommended that marijuana be transferred from schedule I to schedule III rather than from schedule I to schedule II based on its

evaluation that the drug has a relatively lower level of abuse compared to drugs currently scheduled in schedules I and II and its evaluation that marijuana may lead to moderate or low physical dependence and has a low likelihood of psychic dependence. Consistent with HHS's analysis, the Attorney General has determined at this initial stage that marijuana does not appear to meet the elements of a schedule II drug, which include a high potential for abuse and a likelihood of severe physiological or physical dependence from such abuse. 21 U.S.C. 812(b)(3). Rather, marijuana's profile as a drug with a lower degree of abuse potential than schedule I (*e.g.,* heroin) and schedule II (*e.g.,* fentanyl, cocaine) drugs and a moderate to low level of physical dependence militates in favor of rescheduling it in schedule III. Accordingly, in this notice of proposed rulemaking, the Attorney General is proposing to reschedule marijuana in schedule III and solicits comments on these preliminary findings.

Types of Marijuana To Be Rescheduled

This rescheduling of marijuana would apply to marijuana as listed in 21 CFR 1308.11(d)(23). The rescheduling also would apply to marijuana extracts as defined in 21 CFR 1308.11(d)(58) because they meet the statutory definition of marijuana and, prior to 2017, were included in 21 CFR 1308.11(d)(23). *See Establishment of a New Drug Code for Marihuana Extract,* 81 FR 90194 (Dec. 14, 2016). In addition, this proposal would apply to Δ9-THC derived from the marijuana plant (other than the mature stalks and seeds) that falls outside the definition of hemp, because it meets the statutory definition of marijuana.

This proposal would not apply to synthetically derived THC, which is outside the CSA's definition of marijuana. Those tetrahydrocannabinols that can be derived only through a process of artificial synthesis (*e.g.,* delta-10-tetrahydrocannabinol) are excluded. HHS provided a recommendation only relating to ''marijuana'' as defined in the CSA. That definition is limited to the plant (other than the mature stalks and seeds) and derivatives of the plant. Therefore, synthetic THC will remain in schedule I. This rulemaking would not affect the status of hemp (as defined in 7 U.S.C. 1639*o*), because hemp is excluded from the definition of marijuana. This rulemaking is not proposing to reschedule any drug product containing marijuana or THC that previously has been rescheduled out of schedule I (*e.g.,* Marinol and Syndros). Nor does it impact the status of any previously scheduled synthetic cannabinoids.

VIII. International Treaty Obligations

In proposing an appropriate schedule for marijuana, the Attorney General must also consider compliance with the treaty obligations of the United States. As the CSA recognizes, the United States is a party to the Single Convention. 21 U.S.C. 801(7). Parties to the Single Convention are obligated to maintain various control provisions related to the drugs that are covered by the treaty. *See, e.g.,* Single Convention arts. 2, 4. Congress enacted many of the CSA's provisions for the specific purpose of ensuring U.S. compliance with the treaty. *See* OLC Op. at *27. Among these is a scheduling provision, 21 U.S.C. 811(d)(1). Section 811(d)(1) provides that, where a drug is subject to control under the Single Convention, the Attorney General must ''issue an order controlling such drug under the schedule he deems most appropriate to carry out such [treaty] obligations, without regard to the findings required by [21 U.S.C. 811(a) or 812(b)] and without regard to the procedures prescribed by [21 U.S.C. 811(a) and (b)].'' [39]

Marijuana is a drug covered in the Single Convention under the term ''cannabis.'' [40] OLC initially advised in 1972 that controls under Article 21 of the Single Convention would not be satisfied if marijuana were listed in schedule III, IV, or V of the CSA. Memorandum for John E. Ingersoll, Director, Bureau of Narcotics and Dangerous Drugs, from Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, *Re:* Petition to Decontrol Marihuana; Interpretation of Section 201 of the Controlled Substances Act of 1970 at 12–13 (Aug. 21, 1972). However, OLC has reexamined the conclusion of its 1972 memorandum, taking into account statutory amendments since 1972 and a possibility it did not consider in 1972: placing marijuana into schedule III while issuing regulations that would enable the United States to comply with its international obligations. OLC Op. at *4, 26–35. OLC has concluded that both the Single Convention and the CSA allow the Attorney General to satisfy the treaty obligations of the United States with respect to marijuana by supplementing scheduling decisions with additional controls under the CSA. *Id.*

If marijuana were listed in schedule III, most of the Single Convention's obligations would continue to be met by CSA statutory authorities and associated regulations. *See* OLC Op. at *33–34. One potential gap concerns the quota on manufacturing cannabis required by Article 21 of the Convention, but that gap can be filled using the CSA's regulatory authorities. *See id.* at *34; *see also, e.g.,* 21 U.S.C. 821 (authorizing the Attorney General to impose restrictions ''relate[ed] to the . . . control of the manufacture'' of a drug); *id.* 871(b) (authorizing the Attorney General to issue regulations ''necessary and appropriate for the efficient execution of his functions under this subchapter''); *id.* 822(b) (allowing the Attorney General to regulate ''the extent'' of manufacture of a drug through registration); *id.* 823(e) (requiring the Attorney General to register an applicant to manufacture a schedule III drug ''unless he determines that the issuance of such registration is inconsistent with the public interest'').

In addition, if marijuana is transferred into schedule III, DEA will continue to have authority to maintain its existing regulatory scheme, located at 21 CFR part 1318, governing the registration of manufacturers seeking to plant, grow, cultivate, or harvest marijuana, as required to comply with Articles 23 and 28 of the Single Convention. Authority for those regulations currently flows from 21 U.S.C. 823(a), which is applicable to drugs in schedules I and II. OLC has concluded, however, that 21 U.S.C. 823(e), which is applicable to drugs in schedules III, IV, and V, provides an alternative source of authority for complying with Articles 23 and 28 of the Single Convention. *See*

[39] As noted above, OLC and the D.C. Circuit do not understand the ''without regard'' clause in section 811(d)(1) as prohibiting the Attorney General from following the normal scheduling practices when international obligations are involved. Instead, they have interpreted it as requiring the Attorney General to identify which schedules would satisfy the international obligations of the United States with respect to a particular drug and, if more than one schedule would do so, to select among schedules using the procedures set forth in sections 811(a), 811(b), and 812(b). *See* OLC Op. at *29 n.8; *NORML II,* 559 F.2d at 747.

[40] Under the Single Convention, '''[c]annabis plant' means any plant of the genus Cannabis.'' Single Convention art. 1(1)(c). The Single Convention defines ''cannabis'' to mean ''the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.'' *Id.* art. 1(1)(b). This definition of ''cannabis'' under the Single Convention is slightly less inclusive in certain respects than the CSA definition of ''marijuana,'' which includes all parts of the cannabis plant except for the mature stalks, sterilized seeds, oil from the seeds, and certain derivatives thereof. *See* 21 U.S.C. 802(16). Cannabis and cannabis resin are included in the list of drugs in Schedule I of the Single Convention, and cannabis is subject to the same controls as Schedule I drugs as well as additional controls. *See* Single Convention art. 2(6); *id.* art. 28.

OLC Op. at *34 n.9. The CSA also recognizes that the United States is also a party to the Convention on Psychotropic Substances, Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175 (''Convention on Psychotropic Substances''). *See also* 21 U.S.C. 801a(2). As with the Single Convention, parties to the Convention on Psychotropic Substances are obligated to take various control measures related to the drugs that are covered by the treaty. *Id.* Congress implemented the additional authority necessary to comply with the Convention on Psychotropic Substances through various amendments to the CSA. *Id.* 801a(2)–(3).

Δ9-THC is a substance covered by schedule II of the Convention on Psychotropic Substances. In this rule, DOJ proposes to reschedule Δ9-THC that falls within the CSA's definition of marijuana into CSA schedule III. As is the case for marijuana under the Single Convention, the controls available under CSA schedule III are sufficient to comply with the requirements of the Convention on Psychotropic Substances with respect to Δ9-THC, although additional regulatory action may be necessary to implement certain Convention requirements, such as the export and import authorizations required by Article 12. *See, e.g., Schedules of Controlled Substances: Rescheduling of the Food and Drug Administration Approved Product Containing Synthetic Dronabinol [(-)-D*[9] *-(trans)-Tetrahydrocannabinol] in Sesame Oil and Encapsulated in Soft Gelatin Capsules From Schedule II to Schedule III,* 64 FR 35928, 35928 (July 2, 1999). *Compare, e.g.,* Convention on Psychotropic Substances art. 12(1) (requiring export and import authorizations for substances in Convention Schedule II), *with* 21 U.S.C. 952(b)(2) (authorizing import permits for CSA schedule III substances), *and id.* 953(e)(2) (authorizing export permits for CSA schedule III substances).

Accordingly, concurrent with this rulemaking, DEA will consider the marijuana-specific controls that would be necessary to meet U.S. obligations under the Single Convention and the Convention on Psychotropic Substances in the event that marijuana is rescheduled to schedule III, and, to the extent they are needed if marijuana is rescheduled, will seek to finalize any such regulations as soon as possible.

IX. Requirements for Handling Marijuana and Other Applicable Controls

If marijuana is transferred to schedule III, the regulatory controls applicable to schedule III controlled substances would apply, as appropriate, along with existing marijuana-specific requirements and any additional controls that might be implemented, including those that might be implemented to meet U.S. treaty obligations. The manufacture, distribution, dispensing, and possession of marijuana would also remain subject to applicable criminal prohibitions under the CSA. 21 U.S.C. 841–844.

In addition, marijuana would remain subject to applicable provisions of the FDCA. For example, under the FDCA, a drug containing a substance within the CSA's definition of ''marijuana'' would need FDA approval to be lawfully ''introduce[d] or deliver[ed] for introduction into interstate commerce,'' unless an IND is in effect for that drug. *See* 21 U.S.C. 355(a), 355(i), 331(d). To date, although there have been INDs for drugs containing a substance within the CSA's definition of ''marijuana,'' no such drugs have been approved by FDA.

DOJ is seeking comment on the practical consequences of rescheduling marijuana into schedule III under the relevant statutory frameworks.

Conclusion

Based on the legal opinion of OLC and consideration of the scientific and medical evaluation and accompanying recommendation of HHS, the Attorney General is initiating a rulemaking that proposes the placement of marijuana in schedule III of the CSA. DOJ is soliciting comments on this proposal.

X. Regulatory Analyses

1. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and 14094 (Modernizing Regulatory Review)

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for removing a drug or other substance from the list of controlled substances. Such actions are exempt from review by the Office of Management and Budget pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563 and 14094.

While this scheduling action is exempt from review under Executive Order 12866, DOJ recognizes this action may have unique economic impacts. As stated above, marijuana is subject to a number of State laws that have allowed a multibillion dollar industry to develop. DOJ acknowledges that there may be large impacts related to Federal taxes and research and development investment for the pharmaceutical industry, among other things. DOJ is specifically soliciting comments on the economic impact of this proposed rule. DOJ will revise this section at the final rule stage if warranted after consideration of any comments received.

2. Executive Order 12988 (Civil Justice Reform)

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

3. Executive Order 13132 (Federalism)

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

4. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have Tribal implications warranting the application of Executive Order 13175. This 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.

5. Regulatory Flexibility Act

DOJ has concluded that this action may have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* For example, section 280E of the Internal Revenue Code bars businesses from claiming tax deductions for otherwise allowable expenses where the business ''consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act).'' 26 U.S.C. 280E. If marijuana is ultimately transferred to schedule III, section 280E would no longer serve as a statutory bar to claiming deductions for those expenses. In addition, small entities engaged in research on marijuana may

be subject to different research protocols set by DEA if the research is conducted on a schedule III substance rather than a schedule I substance.[41] However, DOJ is currently not in a position to estimate the number of small entities affected by these or other potential effects of this action. DOJ seeks comment and additional information to inform its analysis.

6. Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act of 1995 (''UMRA''), 2 U.S.C. 1501 *et seq.,* DOJ has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' *See* 2 U.S.C. 1532(a). Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA.

7. Paperwork Reduction Act of 1995

This action does not impose any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995, 44 U.S.C. 3502(3).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by:
■ a. Removing paragraphs (d)(23) and (58).
■ b. Redesignating paragraphs (d)(24) through (57) and (59) through (104) as paragraphs (d)(23) through (102), respectively.
■ c. Revising newly redesignated paragraph (d)(30).

The revision reads as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(30) Tetrahydrocannabinols—7370

(i) Meaning tetrahydrocannabinols, except as in paragraphs (d)(30)(ii) and (iii) of this section, naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extracts of such plant, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant.

(ii) Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639*o.*

(iii) Tetrahydrocannabinols does not include any substance that falls within the definition of marijuana set forth in 21 U.S.C. 802(16).

* * * * *

■ 3. Amend § 1308.13 by adding paragraphs (h) through (j) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(h) *Marijuana.* Marijuana, as defined in 21 U.S.C. 802(16).

(i) *Marijuana extract.* Marijuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, containing greater than 0.3 percent delta-9-tetrahydrocannabinol on a dry weight basis, other than the separated resin (whether crude or purified) obtained from the plant.

(j) *Naturally derived delta-9-tetrahydrocannabinols.* (1) Meaning those delta-9-tetrahydrocannabinols, except as in paragraphs (j)(2) and (3) of this section, that are naturally contained in a plant of the genus Cannabis (cannabis plant).

(2) Naturally derived delta-9-tetrahydrocannabinols do not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639*o.*

(3) Naturally derived delta-9-tetrahydrocannabinols do not include any delta-9-tetrahydrocannabinols contained in substances excluded from the definition of marijuana as set forth in 21 U.S.C. 802(16)(B)(ii).

Dated: May 16, 2024.

Merrick B. Garland,

Attorney General.

[FR Doc. 2024–11137 Filed 5–17–24; 11:15 am]

BILLING CODE 4410–09–P

[41] *See* Drug Enforcement Admin., *Researcher's Manual* 18–21 (2022), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-057)(E.O.-DEA217)_Researchers_Manual_Final_signed.pdf.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0393]

RIN 1625–AA11

Regulated Navigation Area; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary Regulated Navigation Area for certain waters of the Cuyahoga River. This action is necessary to provide for the safety of life on these navigable waters near the ''Irishtown Bend'' in Cleveland, Ohio, during a bank stabilization construction project from August 15, 2024, through November 30, 2025. This proposed rulemaking would limit vessel speeds near the area and prohibit vessels from being inside the Regulated Navigation Area during construction hours unless authorized by the Captain of the Port Sector Eastern Great Lakes or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 20, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0393 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Cody Mayrer at Marine Safety Unit Cleveland's Waterways Management Division, U.S. Coast Guard; telephone 216–937–0111, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On December 17, 2023, Goettle Construction notified the Coast Guard that they will be conducting waterside construction associated with a bank stabilization project on the Cuyahoga River in Cleveland, Ohio from August 15, 2024, through November 30, 2025. Construction is intended to shore-up and replace approximately 2,400 linear feet of corrugated steel bulkhead located on the western (left descending) bank of the Cuyahoga River between the Detroit-Superior Bridge and the Columbus Road Bridge. The Captain of the Port Sector Eastern Great Lakes (COTP) has determined that potential hazards associated with the equipment used to complete this project would be a safety concern for any craft intending to navigate near the project area during construction hours. Furthermore, additional safety measures are necessary to keep workers on the construction barges safe while completing the construction project.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within 10 feet of the construction barges during the scheduled construction hours of 8 a.m. through 4 p.m., Monday through Friday. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The Captain of the Port Eastern Great Lakes (COTP) is proposing to establish a Regulated Navigation Area (RNA) from 8 a.m. through 4 p.m. Monday through Friday starting on August 15, 2024, with an anticipated completion date of November 30, 2025. The RNA would cover all navigable waters within 10 feet of construction barges in the Cuyahoga River located on the western bank (left descending bank) of the Cuyahoga River between the Detroit-Superior Bridge and the Columbus Road Bridge in Cleveland, Ohio. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the scheduled hours of the construction project. No vessel or craft would be permitted to be operated within 10 feet of the construction barges without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, and duration of the proposed rule.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination

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 proposed rule involves a Regulated Navigation Area lasting 8 hours each day, Monday through Friday that would prohibit vessels from operating within 10 feet of the construction barges. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0393 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.Txx–xxxx to read as follows:

§ 165.Txx–xxx Regulated navigation area; Irishtown Bend Construction, Cuyahoga River, Cleveland, OH.

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of the Cuyahoga River between the Detroit-Superior Bridge in position 41°29′37″ N, 081°42′13″ W (NAD 83) and the Columbus Road Bridge in position 41°29′17″ N, 081°42′01″ W (NAD 83), from surface to bottom, during the time of enforcement described in paragraph (d) below.

(b) *Definition.* As used in this section, ''*on-scene representative*'' of the Captain of the Port Eastern Great Lakes (COTP) is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel, other designated craft, or on shore and communicating with vessels via VHF–FM radio or loudhailer.

(c) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) A vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless it is engaged or intending to engage in construction work discussed in the RNA or are able to maintain a safe distance from the construction barges. All movement within the RNA is subject to a ''Slow-No Wake'' speed limit. No vessel may produce a wake or attain speeds greater than 5 knots unless a higher minimum speed is necessary to maintain bare steerageway.

(2) The operator of any vessel transiting in the RNA must comply with all lawful directions given to them by the Captain of the Port Eastern Great Lakes (COTP) or the COTP's on-scene representative.

(3) The inland navigation rules in 33 CFR subchapter E remain in effect within the RNA and must be followed at all times.

(4) No vessel may navigate within 10 feet of the construction barges during the Enforcement Period.

(d) *Enforcement period.* This section is enforceable from 8 a.m. through 4 p.m. every day, Monday through Friday, from August 15, 2024, through November 30, 2025. If the COTP determines this section need not be enforced during these times on a given day, he will use marine broadcast notices to mariners to announce the specific periods when this section will not be subject to enforcement. For information on radio stations broadcasting BNMs, see 33 CFR 72.01–25 and check the latest Local Notice to Mariners (LNM) for Coast Guard District 9 on *https://www.navcen.uscg.gov.*

Dated: May 9, 2024.

M.I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Eastern Great Lakes.

[FR Doc. 2024–10742 Filed 5–20–24; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 89, No. 99
Tuesday, May 21, 2024

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting; Correction

AGENCY: United States Agency for International Development.

ACTION: Request for public comment and notice of public meeting; correction.

SUMMARY: The United States Agency for International Development (USAID) published a notice in the **Federal Register** on Thursday, May 2, 2024, to provide details regarding a Partnership for Peace Fund (PPF) Advisory Board meeting being held on May 21, 2024. The meeting link and telephone access information for the upcoming meeting have been updated.

DATES: The next Partnership for Peace Fund Advisory Board meeting will be held on May 21, 2024, from 9 a.m.–11:15 a.m. EST via the Webex platform (*https://usaid.webex.com/usaid/j.php?MTID=md4603ab865505b9111f58377e61c1020* or via phone at +1–415–527–5035 with access code 282 641 72165.)

The meeting does not require pre-registration.

FOR FURTHER INFORMATION CONTACT: Dan McDonald, Designated Federal Officer, at *meppa@usaid.gov* or +1 202–712–4965.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. N0. 2024–09503, appearing on page 35773 in the **Federal Register** of Thursday, May 2, 2024, make the following corrections:

1. On page 35773, in the first column, in **DATES**, correct ''(*https://usaid.zoomgov.com/j/1606503264?pwd=ZVpXSWpnYnBoTHFIVFEwYTR5QTVTUT09*}'' to read ''(*https://usaid.webex.com/usaid/j.php?MTID=md4603ab865505b9111f58377e61c1020*)''.

2. On page 35773, in the third column, under ''Public Meeting,'' correct ''(*https://usaid.zoomgov.com/j/1606503264?pwd=ZVpXSWpnYnBoTHFIVFEwYTR5QTVTUT09*'' to read ''(*https://usaid.webex.com/usaid/j.php?MTID=md4603ab865505b9111f58377e61c1020*)''.

Meghan Holohan,

Deputy Office Director, Office of Middle Eastern Affairs, Bureau for the Middle East, USAID.

[FR Doc. 2024–11215 Filed 5–17–24; 4:15 pm]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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 June 20, 2024 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.

Food Safety and Inspection Service

Title: Mechanically Tenderized Beef Products.

OMB Control Number: 0583–0160.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*). This statute mandates that FSIS protect the public by ensuring that meat products are safe, wholesome, and properly labeled.

Need and Use of the Information: FSIS requires the use of the descriptive designation ''mechanically tenderized'' on the labels of raw or partially cooked needle or blade tenderized beef products, including beef products injected with marinade or solution, unless such products are destined to be fully cooked at an official establishment. Beef products that have been needle or blade tenderized are referred to as ''mechanically tenderized'' products. Consumers use the information added to the labels of raw or partially cooked mechanically tenderized beef products to ensure that they thoroughly cook these products.

Description of Respondents: Business or other-for profit.

Number of Respondents: 555.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 21,833.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–11104 Filed 5–20–24; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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 June 20, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: General Administrative Regulations; Subpart V-Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies.

OMB Control Number: 0563–0064.

Summary of Collections: The Federal Crop Insurance Corporation (FCIC) is a wholly owned Government corporation created February 16, 1938, (7 U.S.C. 1501). The program was amended previously, but Public Law 96–365, dated September 26, 1980, provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act (Act), as amended in 1994, 1996, and 1998, further expanded the role of the crop insurance program to be the principal tool for risk management by producers of farm products. The Act further required that the crop insurance program operate on an actuarially sound basis. The Act allows any person to prepare a submission or propose to the FCIC Board of Directors (Board) a policy, provision of a policy, or rates of premium. The Act as amended June 20, 2000, by Public Law 106–224 provides for independent reviews of insurance products by persons experienced as actuaries and in underwriting. The Act, as amended by Public Law 110–246, dated June 18, 2008, provided the opportunity for the submission of a concept proposal to the Board for approval for advance payment of estimated research and development expenses. The Act, as amended by the 2014 Agricultural Act, dated February 7, 2014, requires FCIC to provide instructions for index-based weather insurance products, a consultation report for submissions of products for specialty crops; additional review and approval criteria for submissions; and additional advanced payment for research and development costs for concept proposals.

Need and Use of the Information: An applicant has the option to submit a concept proposal or a submission package for a crop insurance product and have it presented to the Board. The Board will review an applicant's submissions to determine, if the interests of agricultural producers and taxpayers are protected; the submission is actuarially appropriate; appropriate insurance principles are followed; the requirements of the Act are met; and that sound, reasonable and appropriate underwriting principals are followed. If the information is incomplete, the submission will be disapproved.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 138.

Frequency of Responses: Recordkeeping: Reporting; Other.

Total Burden Hours: 30,921.

Levi S. Harrell,

Departmental Information Clearance Officer.

[FR Doc. 2024–11063 Filed 5–20–24; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Siuslaw National Forest within Benton, Coos, Douglas, Lane, Lincoln, Polk, Tillamook, and Yamhill counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on June 5, 2024, 9:00 a.m. to 5:00 p.m., Pacific Standard Time (PST).

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. PST on May 27, 2024. Written public comments will be accepted by 11:59 p.m. PST on May 27, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person at the Siuslaw National Forest Headquarters office, located at 3200 Southwest Jefferson Way, Corvallis, Oregon 97331. The public may also join the meeting virtually via videoconference. Advisory committee information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/siuslaw/workingtogether/advisorycommittees* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *SM.FS.siuslaw_RAC@usda.gov* or via mail (postmarked) to Siuslaw Resource Advisory Committee, ATTN: Joanie Schmidgall, 3200 Southwest Jefferson Way, Corvallis, Oregon, 97331. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PST on May 27, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *SM.FS.siuslaw_RAC@usda.gov* or via mail (postmarked) to Siuslaw Resource Advisory Committee, ATTN: Joanie Schmidgall, 3200 Southwest Jefferson Way, Corvallis, Oregon 97331.

FOR FURTHER INFORMATION CONTACT: Rebecca Brooke, Designated Federal

Officer, by phone at 541–750–7008 or email at *rebecca.brooke@usda.gov;* or Joanie Schmidgall, Resource Advisory Committee Coordinator, by phone at 541–259–9804 or email at *joan.schmidgall@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals.

2. Make funding recommendations on Title II projects.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: April 23, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–09089 Filed 5–20–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Central Idaho Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Salmon-Challis National Forest within Custer and Lemhi counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on June 5, 2024, 9:00 a.m., Mountain Daylight Time (MDT).

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. MDT on May 31, 2024. Written public comments will be accepted by 11:59 p.m. MDT on May 31, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held in-person at the Challis Community Events Center, located at 411 Clinic Road, Challis, Idaho 83226. The public may also join the meeting virtually via telephone or video conference. Committee information and details about the meeting, including a link to access the meeting, can be found on the advisory committees' web page at *https://www.fs.usda.gov/main/scnf/workingtogether/advisorycommittees* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *amy.baumer@usda.gov* or via mail (postmarked) to Amy Baumer, 1206 S Challis St., Salmon, Idaho 83467. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MDT on May 31, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *amy.baumer@usda.gov* or via mail (postmarked) to Amy Baumer, 1206 S Challis St., Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Amy Baumer, Central Idaho RAC Coordinator, by phone at 208–756–5100 or via email at *amy.baumer@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II proposals.

2. Make funding recommendations on Title II projects.

3. Discuss the proposed Salmon-Challis National Forest Recreation Fee Proposal.

4. Make recommendations on recreation fee proposals.

The agenda will include time for individuals to make oral statements of three minutes or less. To be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 14 after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the

Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202–720–2600 (voice and TTY) or USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

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 and 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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: April 23, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–09086 Filed 5–20–24; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 10 a.m. ChST on Thursday, June 6, 2024 (8 p.m. ET on Wednesday, June 5, 2024). The purpose of this meeting is to discuss the Committee's project, *Overrepresentation of FAS Members in the Criminal Justice System on Guam.*

DATES: Thursday, June 6, 2024, from 10 a.m.–11 a.m. ChST (Wednesday, June 5, 2024, from 8 p.m.–9 p.m. ET).

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_kjzoYZv4QEqOiJhyWLPk2A

Join by Phone (Audio Only): (833) 435–1820 USA Toll Free; Meeting ID: 161 502 1997

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Mussatt at *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Guam Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Approval of Meeting Minutes
III. Discussion: Project Planning
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: May 16, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–11117 Filed 5–20–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Missouri Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting on Monday May 20, 2024, at 2:00 p.m. Central time. The purpose of the meeting will be to discuss their projects.

DATES: The meeting will take place on Monday May 20, 2024, at 2:00 p.m. Central Time.

Public Call Information: Dial: (833) 435–1820, Confirmation Code: 161 985 6743.

Zoom Link: https://www.zoomgov.com/webinar/register/WN_Dzs56rdoTwy0G-c2F10kzg.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to

the toll-free telephone number. Individual who is deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Chair's Comment
III. Committee Discussion
IV. Next steps
V. Adjournment

Dated: May 16, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–11123 Filed 5–20–24; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of virtual panel briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Indiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold two panel briefings via Zoom. The purpose of these briefings is to hear testimony on hate crime nationally and in Indiana.

DATES:

- PANEL I: Thursday, June 20, 2024, from 2:00 p.m.–4:00 p.m. Eastern Time
- PANEL II: Thursday, June 27, 2024, from 2:00 p.m.–4:00 p.m. Eastern Time

ADDRESSES: These briefings will be held via Zoom.

PANEL I:

- *Registration Link (Audio/Visual): https://bit.ly/3K15cjD*
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 647 5297#

PANEL II:

- *Registration Link (Audio/Visual): https://bit.ly/4dCbpjF*
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 161 330 9935#

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Director of Eastern Regional Office and Designated Federal Officer, at *ero@usccr.gov* or 1–202–539–8468.

SUPPLEMENTARY INFORMATION: These Committee meetings are available to the public through the registration link above. Any interested members of the public may attend these meetings. Before adjourning each meeting, the Chair will recognize members of the public to make brief oral statements, as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at these meetings. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plans. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to each meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Ivy Davis at *ero@usccr.gov;* please include Indiana Committee in the subject line of the transmitting email. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–539–8468.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after each meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcoming Remarks
II. Panelist Presentations
III. Committee Q&A
IV. Public Comment
V. Adjourn

Dated: May 16, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–11119 Filed 5–20–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act That the Mississippi Advisory Committee (Committee) will hold a planning meeting on Wednesday, May 22, 2024 at 1:00 p.m. Central time. The Committee will continue to discuss their projects.

DATES: The briefing will take place on Wednesday May 22, 2024, at 1:00 p.m. Central Time.

Public Call Information: Dial: 833–435–1820, Confirmation Code: 161–467–1561:

Join from the meeting link: https://www.zoomgov.com/webinar/register/WN_YrdvL6aBR-2TNBPE60iNQA

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not

refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Chair's Comments
III. Committee Discussion
IV. Next steps
V. Public comment
VI. Adjournment

Dated: May 16, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–11122 Filed 5–20–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via ZoomGov on Wednesday, May 29, 2024, from 3:00 p.m.–4:00 p.m. Pacific Time, for the purpose of discussing post-report activities on their report on physical accessibility in Washington.

DATES: The meeting will take place on:

- Wednesday, May 29, 2024, from 3:00 p.m.–4:00 p.m. PT

Zoom Webinar Link to Join: https://www.zoomgov.com/meeting/register/vJItf-urqzIqH1F89pGppY-Oz6qcLPU8_To

FOR FURTHER INFORMATION CONTACT: Brooke Peery, DFO, at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf or hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Services Specialists, at *atrevino@usccr.gov* at least 10 business days prior to the meeting.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Washington Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *atrevino@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: May 16, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–11120 Filed 5–20–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1:00 p.m. MT on Wednesday, July 17, 2024. The purpose of this meeting is to discuss the Committee's project, *Housing Discrimination and Fair Housing Practices in Wyoming.*

DATES: Wednesday, July 17, 2024, from 1:00 p.m.–2:30 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_HKHg3J6qS92KT4boPUte4g

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 620 4293

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning

impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Wyoming Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Discussion: Draft Report
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: May 16, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–11118 Filed 5–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2024]

Foreign-Trade Zone (FTZ) 12, Notification of Proposed Production Activity; Uni Ag Group, LLC; (Bulk Premixes); McAllen, Texas

The McAllen Foreign Trade Zone Inc., grantee of FTZ 12, submitted a notification of proposed production activity to the FTZ Board (the Board) for export-only production on behalf of Uni Ag Group, LLC (Uni Ag), located in McAllen, Texas within FTZ 12. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on May 15, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include: chocolate mixture (85% to 92% sugar and 15% to 8% cocoa powder), chocolate premix (sugar, cocoa, citric acid), gelatin premix (5% to15% gelatin and 95% to 85% sugar), peanut premix(10% peanuts, 90% sugar), and syrup premix (97% raw sugar, 3% activated carbon).(duty rate ranges from 33.87 cents per kilogram plus 6% to 5.10%).

The proposed foreign-status materials/components include: beet sugar; cane sugar; refined white sugar; raw sugar (very high polarity sugar); roasted peanuts; raw peanuts; gelatin; cocoa powder; blanched peanuts; and activated carbon (duty rate ranges from 0.52 cents per kilogram to 131.80%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41). The request indicates that activated carbon is subject to an antidumping/countervailing duty (AD/CVD) order/investigation if imported from certain countries. The Board's regulations (15 CFR 400.13(c)(2)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in PF status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is July 1, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Kolade Osho at *Kolade.Osho@trade.gov.*

Dated: May 15, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–11128 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–813]

Strontium Chromate From Austria: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Habich GmbH (Habich) did not make sales of subject merchandise in the United States at prices below normal value during the period of review (POR) November 1, 2021, through October 31, 2022.

DATES: Applicable May 21, 2024.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2022, Commerce published the *Preliminary Results.*[1] The administrative review covers Habich, the only company for which a review was requested. For the events that occurred since the *Preliminary Results,* see the Issues and Decision Memorandum.[2]

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise covered by the *Order* is strontium chromate from Austria. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed in this

[1] *See Strontium Chromate from Austria: Preliminary Results of Antidumping Administrative Review; 2020–2021,* 88 FR 84777 (December 6, 2023) *(Preliminary Results).*

[2] *See* Memorandum, ''Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Strontium Chromate from Austria; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Strontium Chromate from Austria and France: Antidumping Duty Orders,* 84 FR 65349 (November 27, 2019) (*Order*).

administrative review in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is in the appendix 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 *https://access.trade/gov/public/FRNoticesListLayout.aspx*.

Changes Since the Preliminary Results

Based on our evaluation of the comments received from interested parties regarding our *Preliminary Results* and our review of the record to address those comments, we made no changes to the weighted-average dumping margin calculation for Habich, as detailed in the Issues and Decision Memorandum.[4]

Final Results of Review

We determine that the following estimated weighted-average dumping margin for Habich exists for the period November 1, 2021 through October 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Habich GmbH	0.00

Disclosure

Normally, Commerce discloses the calculations performed for the final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we made no changes to the preliminary calculations, there are no new calculations to disclose for the final results.

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Where the respondent's weighted-average dumping margin is either zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[5] Accordingly, because the final weighted-average dumping margin for Habich in this review is zero percent, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by Habich where it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation of 25.90 percent *ad valorem,*[6] if there is no rate for the intermediate company(ies) involved in the transaction.[7]

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Habich will be equal to the weighted-average dumping margin established in the final results of this administrative review (*i.e.,* 0.00 percent); (2) for merchandise exported by a producer or exporter not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 25.90 percent *ad valorem,* the all-others rate established in the LTFV investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: May 14, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

[4] *See* Issues and Decision Memorandum at Comments 1 through 3.

[5] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[6] *See Order.*

[7] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Order.*

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
Comment 1: Whether Commerce Fully Investigated Habich's Relationship With Its U.S. Customer and Should Revise Its Close Supplier Analysis
Comment 2: Whether Commerce Properly Analyzed If Habich's Sales to Mexico Are Within the Ordinary Course of Trade
Comment 3: Whether Commerce Should Revise Habich's Reported Costs
VI. Recommendation

[FR Doc. 2024–11084 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–820]

Prestressed Concrete Steel Wire Strand From Thailand: Final Results of Antidumping Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that prestressed concrete steel wire strand (PC strand) from Thailand was not sold in the United States at less than normal value (NV) during the period of review (POR) January 1, 2022, through December 31, 2022.

DATES: Applicable May 21, 2024.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney, 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) 482–2285.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2023, Commerce published in the **Federal Register** the *Preliminary Results* of the 2022 administrative review [1] of the antidumping duty order on PC strand from Thailand.[2] The review covers the sole mandatory respondent, The Siam Industrial Wire Co., Ltd. (SIW). We invited interested parties to comment on the *Preliminary Results.*[3] On April 3, 2024, the petitioners submitted a case brief.[4] On April 8, 2024, SIW submitted a rebuttal brief.[5] Neither party argued for any changes from the *Preliminary Results.* Because Commerce received no comments requiring changes to the *Preliminary Results,* we have not modified our analysis and no decision memorandum accompanies this **Federal Register** notice. Accordingly, the final results are unchanged from the *Preliminary Results,* and we are adopting the *Preliminary Results* as the final results of this review. Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this *Order* is prestressed concrete steel wire strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. The merchandise subject to the *Order* is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the scope is dispositive.

Final Results of Review

Although the petitioners and SIW submitted comments, neither party requested changes to the *Preliminary Results* in this review. While the petitioners requested corroboration of the reporting of SIW's suppliers of wire rod in future reviews,[6] the petitioners rescinded their request for review, and there are no other outstanding review requests for the upcoming review period. Additionally, at this stage, the petitioners did not request further corroboration of SIW's reporting of wire rod inputs for this POR.[7] Therefore, their arguments, raised for this administrative review, are moot. Any additional corroboration of reporting by SIW's input suppliers, however, will be considered in the context of a future review.

As a result of this review, we determine the following estimated weighted-average dumping margin exists for the POR:

Exporter or producer	Weighted-average dumping margin (percent)
The Siam Industrial Wire Co., Ltd	0.00

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in final results 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 results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Where the respondent's weighted-average dumping margin is either zero or *de minimis* (*i.e.,* less than 0.5 percent),[8] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Accordingly, because SIW's weighted-average dumping margin is zero percent, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by the respondent for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate (*i.e.,* 12.91 percent) determined in the original less-than-fair-value (LTFV) investigation [9] if there is no rate for the intermediate

[1] *See Prestressed Concrete Steel Wire Strand from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2022;* 89 FR 7370 (February 2, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Thailand,* 69 FR 4111 (January 28, 2004) (*Order*).

[3] *See Preliminary Results.*

[4] *See* Petitioners' Letter, ''Petitioners' Case Brief,'' dated April 3, 2024 (Petitioners' Case Brief). The Petitioners in this proceeding are Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corp. (collectively, the petitioners).

[5] *See* SIW's Letter, ''Rebuttal Brief of The Siam Industrial Wire Co., Ltd.,'' dated April 8, 2024.

[6] *See* Petitioners' Case Brief at 2.

[7] *Id.*

[8] *See* 19 CFR 351.106(c)(1).

[9] *See Order,* 69 FR at 4111.

company(ies) involved in the transaction.[10]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for SIW will be equal to the weighted-average dumping margin established in the final results of this administrative review (*i.e.,* 0.00 percent); (2) for merchandise exported by a producer or exporter not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, or a previous segment, but the producer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 12.91 percent *ad valorem,* the all-others rate established in the LTFV investigation.[11] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: May 15, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–11125 Filed 5–20–24; 8:45 am]

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[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Order,* 69 FR at 4111.

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Survey of International Air Travelers

AGENCY: International Trade Administration, 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 July 22, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Richard Champley, Program Manager, and Contracting Officer Representative (COR), ITA, *richard.champley@trade.gov,* (202) 482–4753 or *PRA@trade.gov.* Please reference OMB Control Number 0625–0227 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 Richard Champley, Program Manager, and Contracting Officer Representative (COR), ITA National Travel & Tourism Office (NTTO). Contact information: *richard.champley@trade.gov* (202) 482–4753).

SUPPLEMENTARY INFORMATION:

I. Abstract

The ''Survey of International Air Travelers'' (Survey/SIAT) program, administered by the National Travel and Tourism Office (NTTO) of the International Trade Administration provides source data required to: (1) estimate international travel and passenger fare exports, imports and the trade balance for the United States, (2) comply with the *U.S. Travel Promotion Act of 2009* (Pub. L. 111–145), collect a one percent sample of inbound travelers, analyze and report information to government and industry stakeholders, and support the increase of U.S. exports, (3) to comply with the 1961, 1981, and 1996 travel and tourism related acts to collect and publish comprehensive international travel and tourism, statistics and other marketing information, and (4) support the continuation of the Travel & Tourism Satellite Accounts for the United States, which provide the only spending and employment figures for the industry, and (5) to support the goals of objectives of the 2022 *National Travel & Tourism Strategy.*

The Survey program contains the core data that is collected, analyzed, and communicated by NTTO with other government agencies, associations and businesses that share the same objective of increasing U.S. international travel exports. The Survey assists NTTO in assessing the economic impact of international travel on state and local economies, providing visitation estimates, key market intelligence, and identifying traveler and trip characteristics. The U.S. Department of

Commerce assists travel industry enterprises to increase international travel and passenger fare exports and imports for the country as well as travel on U.S. and foreign carriers. The Survey program provides the only available estimates of nonresident visitation to the states and cities within the United States, as well as U.S. resident travel abroad.

A revised (major) survey instrument (questionnaire) (English version plus its translations into eleven foreign languages) was implemented in 2012. It reflects input from over 70 respondents, including: Travel Industry (airlines, travel associations, destinations, lodging); Consultants; Financial Firms; Educational Institutions; and other U.S. Government Agencies. A minor ('non-substantive') change was implemented in 2016 to better reflect the visitor's entry experience into the United States. This was requested by the United States Travel and Tourism Advisory Board to measure compliance with U.S. National Goals.

The 2012 and 2016 revised Survey questionnaire reflect changes in various questions relating to: trip purpose; payment methods; booking/information sources; additional package components, health care/vaccinations, travel insurance information, additional transportation utilized, assessment of the visitor's entry and overall experience; and intentions for further travel to the United States; and ethnicity/race. Several questions from the pre-existing 1996 questionnaire were eliminated to further streamline the survey.

Changes envisioned are: (1) enhanced testing of the QR code/Mobile phone approach to leverage international airlines' growing capability of offering international Wi-Fi to its on-board passengers; (2) further evaluation of a 'short form' version of the paper questionnaire (23 of the existing 33 questions) to reduce burden and improve passenger response rates when time is limited in the boarding area or in markets that tend to be less responsive; (3) evaluation of 'incentives' that could be utilized to encourage an increased number of passenger responses. (4) Recommendations from the United States. Travel & Tourism Advisory Board (TTAB).

II. Method of Collection

The survey instrument/questionnaire ('Survey of International Air Travelers', a/k/a SIAT) continues to be in paper format and is self-administered by the passenger who volunteers to take the survey, either while in the departure gate area or on-board the flight. The flights are randomly selected, and this approach is described as 'cluster sampling.' The majority (95%) of the passenger surveys are collected in U.S. airport departure gate areas. About 5% of all the passenger surveys are collected during flight (on-board) post departure (Canada-air has been included as part of the program in 2020). U.S. and foreign flag airlines that volunteer to participate in the Survey program enable the collection in U.S. departure gate areas and on-board flights.

NTTO is planning to change the format to electronic/digital or to an equally statistically valid process once compelling results have been attained. To date there have been five 'e-Survey' tests: The first test was in partnership with Global Distribution Systems (GDS); the second and third tests were with major airlines in their respective boarding areas to leverage passenger's personal electronic devices (PED) and Wi-Fi capabilities in the airports and on-board certain flights; the fourth test used 'tablet' devices to capture passenger responses in the airport gate area at a major gateway airport; and the fifth test again tested passenger PEDs (mobile phone) through use of a 'QR' code since there have been improvements in Wi-Fi capabilities. The latter approach (QR/Mobile) was used to a limited degree during the 2020–2021 Pandemic period with negligible results due more to passenger reluctance to physical contact rather than adverse reaction to the collection method. Other tests are planned in the foreseeable future based on recommendations from the United States Travel and Tourism Advisory Board (TTAB).

III. Data

OMB Control Number: 0625–0227.

Form Number(s): None.

Type of Review: Regular submission, Extension of current information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300,000 due to mandate of the U.S. Travel Promotion Act of 2009 which requires 'one percent' sample of overseas arrivals.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 75,000.

Estimated Total Annual Cost to Public: $0.00.

Respondent's Obligation: Voluntary.

Legal Authority: Public Law 111–145.

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 Information Collection Request (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 Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–11081 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–863]

Large Diameter Welded Pipe From Canada: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that large diameter welded pipe (LDWP) from Canada was sold in the United States at less than normal value (NV) during the period of review (POR) of May 1, 2022, through April 30, 2023. Additionally, Commerce is rescinding this administrative review, in part, with respect to certain companies that had no entries of subject merchandise during

the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable May 21, 2024.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4948.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2019, Commerce published in the **Federal Register** the antidumping duty order on LDWP from Canada.[1] On May 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On July 12, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* covering 40 exporters and/or producers.[3] We selected Pipe & Piling as the sole mandatory respondent in this administrative review.[4] Commerce extended the time limit for completing the preliminary results of this review until May 10, 2024.[5]

Scope of the Order

The product subject to the *Order* is LDWP from Canada. A complete description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily relied entirely upon facts otherwise available with adverse inferences for Pipe & Piling.

For a complete description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached in Appendix I of this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[7] Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.[8] Therefore, for an administrative review to be conducted, there must be at least one reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the antidumping duty assessment rate calculated for the review period.[9] Because there were no entries in the CBP data for the 38 companies listed in Appendix II, on December 21, 2023, Commerce notified all interested parties of its intent to rescind this review, in part, with respect to these companies and received no comments.[10] Accordingly, Commerce is rescinding this review, in part, with respect to these 38 companies.

Preliminary Affiliation and Collapsing Determination

Based on record evidence in this review, Commerce preliminarily finds that the following companies are affiliated, pursuant to section 771(33)(F) of the Act: Pipe & Piling; 1045761 Ontario Ltd. (Operated as Canadian Phoenix Steel Products) (Phoenix); and Spiralco Inc. (Spiralco). Furthermore, pursuant to 19 CFR 351.401(f)(1)–(2), we find that Pipe & Piling Supplies Ltd., Phoenix, and Spiralco should be collapsed and treated as a single entity (collectively, Pipe & Piling).[11]

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists for the period May 1, 2022, through April 30, 2023:

Producer and/or exporter	Weighted-average dumping margin (percent)
Pipe & Piling Supplies Ltd.; 1045761 Ontario Ltd.; Spiralco Inc	50.89

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results 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 preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied total adverse facts available to the sole mandatory respondent, in accordance with section 776 of the Act, there are no calculations to disclose.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[13] Interested parties who

[1] *See Large Diameter Welded Pipe from Canada: Antidumping Duty Order,* 84 FR 18775 (May 2, 2019) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 27445 (May 2, 2023).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 44262 (July 12, 2023); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 62322 (September 11, 2023) (*Initiation Notice*) (correcting the spelling of the name of one company under review). We note that Commerce initiated reviews on two name variations for Pipe & Piling Supplies Ltd. (Pipe & Piling): Pipe & Piling Sply Ltd.; and Pipe & Piling Supplies.

[4] *See* Commerce's Letter, ''Respondent Selection,'' dated August 7, 2023.

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2022–2023 Antidumping Duty Administrative Review,'' dated January 11, 2024.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order of Large Diameter Welded Pipe from Canada; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See, e.g., Dioctyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022,* 88 FR 24758 (April 24, 2023); *see also Certain Carbon and Alloy Steel Cut- to Length Plate from the Federal Republic of Germany: Recission of Antidumping Administrative Review; 2020–2021,* 88 FR 4157 (January 24, 2023).

[8] *See* 19 CFR 351.212(b)(1).

[9] *See* 19 CFR 351.213(d)(3).

[10] *See* Memorandum, ''Notice of Intent to Rescind Review, in Part,'' dated December 21, 2023.

[11] *See* Memorandum, ''Preliminary Affiliation and Collapsing Memorandum,'' dated December 8, 2023 (Affiliation and Collapsing Memorandum), for further discussion.

[12] *See* 19 CFR 351.303 (for general filing requirements).

[13] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[14] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[15] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, by 5 p.m. Eastern time, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce will inform interested parties of the scheduled date for the hearing.[17]

Assessment Rates

Upon completion of the final results, Commerce shall determine and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[18]

With respect to the companies for which are rescinding this review, Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a). If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of the notice of final results of administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Pipe & Piling will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which they were reviewed; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the company-specific rate established for the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 12.32 percent, the all-others rate established in the final determination of the less-than-fair value investigation.[19] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by interested parties in written briefs, within 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1)(B) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: May 10, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Application of Facts Available and Use of Adverse Inference
V. Recommendation

Appendix II—Companies for Which Commerce Is Rescinding the Review

1. Acier Profile SBB Inc.
2. Aciers Lague Steels Inc.
3. Amdor Inc.
4. BPC Services Group
5. Bri-Steel Manufacturing
6. Canada Culvert
7. Canadian National Steel Corporation (CNSC); Evraz Inc. NA Canada (EICA); Evraz Inc. NA
8. Canam (St Gedeon)
9. Cappco Tubular Products Canada Inc.
10. CFI Metal Inc.
11. Dominion Pipe & Piling
12. Enduro Canada Pipeline Services
13. Fi Oilfield Services Canada
14. Forterra
15. Gchem Ltd.
16. Graham Construction
17. Groupe Fordia Inc.
18. Grupo Fordia Inc.
19. Hodgson Custom Rolling
20. Hyprescon Inc.
21. Interpipe Inc.
22. K K Recycling Services
23. Kobelt Manufacturing Co.

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[16] *See APO and Service Final Rule.*

[17] *See* 19 CFR 351.310(d).

[18] *See* 19 CFR 351.212(b)(1).

[19] *See Order,* 85 FR at 18776.

24. Labrie Environment
25. Les Aciers Sofatec
26. Lorenz Conveying P.
27. Lorenz Conveying Products
28. Matrix Manufacturing
29. MBI Produits De Forge
30. Nor Arc
31. Peak Drilling Ltd.
32. Pipe Protecction
33. Prudental
34. Prudential
35. Shaw Pipe Protection
36. Tenaris Algoma Tubes Facility
37. Tenaris Prudential
38. Welded Tube of Can Ltd.

[FR Doc. 2024–11126 Filed 5–20–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 26, 2024, the U.S. Department of Commerce (Commerce) published the preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India. For these final results, Commerce continues to find that Garware Hi-Tech Films Limited (Garware Hi-Tech) is the successor-in-interest to Garware Polyester Limited (Garware Polyester).

DATES: Applicable May 21, 2024.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, 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) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2023, Commerce published the notice of initiation of the requested CCR.[1] On February 26, 2024, Commerce published the preliminary results of this CCR, determining that Garware Hi-Tech is the successor-in-interest to Garware Polyester and should be assigned the same AD cash deposit rate assigned to Garware Polyester in the AD order on PET film from India,[2] and provided all interested parties with an opportunity to comment.[3] No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results.*

Scope of the Order

The products covered by the order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Final Results of CCR

For the reasons stated in the *Preliminary Results,* and because we received no comments from interested parties challenging our preliminary finding, Commerce continues to find that Garware Hi-Tech is the successor-in-interest to Garware Polyester. As a result of this determination and consistent with our established practice, we find that Garware Hi-Tech should receive the AD cash deposit rate currently assigned to Garware Polyester with respect to entries of subject merchandise in the above-noted proceeding.[4] Because there are no changes from the *Preliminary Results,* there is no decision memorandum accompanying this notice and we are adopting the *Preliminary Results* as the final results of this CCR.

Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced and/or exported by Garware Hi-Tech and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 4.45 percent, which is the current AD cash deposit rate for Garware Polyester.[5] This cash deposit requirement shall remain in effect until further notice.

Administrative Protective Order

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 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

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: May 15, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–11132 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Initiation of Antidumping Duty Changed Circumstances Review; Garware,* 88 FR 57090 (August 22, 2023).

[2] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 44175 (July 1, 2002) (*Order*).

[3] *See Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Changed Circumstances Review,* 89 FR 14053 (February 26, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[4] *Id.*

[5] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 14883, 14884 (March 16, 2020), as amended by *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2017–2018; Correction,* 88 FR 87751 (December 19, 2023).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Organization of Scientific Area Committees (OSAC) for Forensic Science Membership Application

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us

assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 22, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: Organization of Scientific Area Committees (OSAC) for Forensic Science Membership Application.

OMB Control Number: 0693–0070.

Form Number(s): None.

Type of Request: Revision of a current information collection.

Number of Respondents: 500 per year.

Average Hours per Response: 5 minutes.

Burden Hours: 42 hours.

Needs and Uses: The information requested will allow NIST to fill new positions created within the Organization of Scientific Area Committees (OSAC) for Forensic Science and to replace positions vacated by resignation or rotation. Over 500 OSAC Members participate in the OSAC with up to ⅓ of them being eligible for reappointment or replacement each year. This effort provides a coordinated U.S. approach to the development of scientifically sound forensic science standards and ensures broad participation from forensic science practitioners, researchers, metrologists, quality assurance experts, defense, and prosecution.

Affected Public: Individuals and Households.

Frequency: Once a year.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0070.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–11083 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD958]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Shrimp Committee, Habitat and Ecosystem Management Committee, and Snapper Grouper Committee. The meeting week will also include a formal public comment session and meetings of the Full Council.

DATES: The Council meeting will be held from 10 a.m. on Monday, June 10, 2024, until 12 p.m. on Friday, June 14, 2024.

ADDRESSES:

Meeting address: The meetings will be held at The Shores Resort and Spa, 2637 South Atlantic Avenue, Daytona Beach Shores, FL 32118; phone: (386) 767–7350. The meeting will also be available via webinar. See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *https://safmc.net/council-meetings/.* Webinar registration links for the meeting will also be available from the Council's website.

Public comment: Public comment on agenda items may be submitted through the Council's online comment form available from the Council's website at: *https://safmc.net/events/june-2024-council-meeting/.* Written comments will be accepted from May 24, 2024, until June 14, 2024. These comments are accessible to the public, part of the Administrative Record of the meeting, and immediately available for Council consideration. A formal public comment session will also be held during the Council meeting.

The items of discussion in the individual meeting agendas are as follows:

Council Session I, Monday, June 10, 2024, 10 a.m. Until 12 p.m. (Closed Session)

The Council will meet in closed session to receive a litigation brief if needed, address the charge for the new For-Hire Reporting Advisory Panel (AP), address appointments to advisory panels, the Council's Citizen Science Advisory Committee and appointments for the Southeast Data, Assessment, and Review (SEDAR) program. The Council will also select the 2023 Law Enforcement Officer of the Year.

Council Session I, Monday, June 10, 2024, 1:30 p.m. Until 5 p.m.

The Council will receive an update on the status the Joint Commercial Electronic Logbook Amendment, reports from NOAA Office of Law Enforcement, the U.S. Coast Guard, Council liaisons, and state agencies, and an update on the Council's Best Fishing Practices and Citizen Science Programs. The Council will receive an update from NOAA Fisheries on public comments received regarding control dates for limited entry in South Atlantic for-hire fisheries and discuss the potential to establish limited entry for the for-hire component of the snapper grouper, dolphin wahoo, and coastal migratory pelagics fisheries. The Council will discuss modifications to the Southeast For-Hire Integrated Electronic Reporting (SEFHIER) Program and receive an update on the Dolphin Management Strategy Evaluation from NOAA Fisheries.

Shrimp Committee, Tuesday, June 11, 2024, 8:30 a.m. Until 10:30 a.m.

The Committee will receive a report from the joint meeting of the Shrimp and Deepwater Shrimp Advisory Panels (AP), receive smalltooth sawfish bycatch estimates from NOAA Fisheries, and an overview of the Shrimp Fishery Management Plan (FMP) and current regulations. The Committee will also discuss the Stock Assessment and Fisheries Evaluation (SAFE) report for shrimp and receive a presentation from NOAA Fisheries on the Shrimp Futures project.

Habitat and Ecosystem Committee, Tuesday, June 11, 2024, 10:30 a.m. Until 12 p.m.

The Committee will receive a report from the Habitat and Ecosystem AP, an Annual Habitat Report, an update on Coral Amendment 10 addressing a fishery access area and consider Coral Habitat Areas of Particular Concern expansion.

Snapper Grouper Committee, Tuesday, June 11, 2024, 1:30 p.m. Until 5 p.m., Wednesday, June 12, 2024, 8:30 a.m. Until 3:45 p.m., and Thursday, June 13, 2024, 8:30 a.m. Until 12 p.m.

The Committee will receive an update on Exempted Fishing Permits for red snapper from NOAA Fisheries. The Committee will discuss red snapper management, including recreational landings, recommendations from its Snapper Grouper AP, a presentation from NOAA Fisheries on a red snapper management options study, recommendations from its Scientific and Statistical Committee (SSC), and a prioritized list of management options for the Snapper Grouper Management Strategy Evaluation (MSE).

The Committee will also receive an overview and public hearing presentation for Amendment 48 to the Snapper Grouper FMP addressing the wreckfish fishery. The Committee will receive AP recommendations relative to Regulatory Amendment 36 addressing gag and black grouper vessel limits and on-demand gear for black sea bass and consider approving the amendment for public hearings. The Committee will also receive recommendations from its Snapper Grouper AP relative to Snapper Grouper Amendment 56 addressing black sea bass management and consider approving for public scoping.

The Committee will receive Snapper Grouper AP recommendations relative to Amendment 55 addressing management measures for scamp and yellowmouth grouper and consider approving the amendment for public hearings. The Committee will also review AP recommendations relative to Snapper Grouper Amendment 46 addressing a private recreational permit for the snapper grouper fishery, continue discussion of the snapper grouper commercial fishery, and receive an update on research in Spawning Special Management Zones.

Wednesday, June 12, 2024, 4 p.m.—Public comment will be accepted from individuals attending the meeting in person and via webinar on all items on the Council meeting agenda. The Council Chair will determine the amount of time provided to each commenter based on the number of individuals wishing to comment.

Council Session II, Thursday, June 13, 2024, 1:30 p.m. Until 5 p.m. and Friday, June 14, 2024, 8:30 a.m. Until 12 p.m.

The Council will receive a litigation brief if needed, receive a staff report, and updates on stakeholder engagement meeting planning and ongoing mackerel port meetings. The Council will receive a report from the Council Coordination Committee's May 2024 meeting, discuss topics for the Fall 2024 meeting of the Outreach and Communications AP, address terms of reference for SEDAR 90 addressing South Atlantic Red Snapper and a Statement of Work for black sea bass, and receive presentations on offshore wind. The Council will receive reports from NOAA Fisheries Southeast Regional Office and the Southeast Fisheries Science Center, and review the Council's workplan and upcoming meetings.

The Council will receive Committee reports and discuss any other business as needed.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–11101 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD975]

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 Pacific Fishery Management Council (Council) and its advisory bodies will meet June 7–13, 2024 in San Diego, CA and via webinar. The Council meeting will be live streamed with the opportunity to provide public comment remotely. The following groups will meet in person in San Diego: Habitat Committee, Scientific and Statistical Committee, Groundfish Management Team, Groundfish Advisory Subpanel, Budget Committee, Legislative Committee, Equity and Environmental Justice Committee, Highly Migratory Species Advisory Subpanel, Highly Migratory Species Management Team, and Enforcement Consultants. The Salmon Advisory Subpanel will meet remotely. Additionally, the Council will be hosting the Highly Migratory Species Workshop on June 6–7, 2024.

DATES: The Highly Migratory Species Workshop will take place on June 6 and 7, starting at 9 a.m., Pacific time (PT) each day and continuing until business for the day is complete. The Pacific Council meeting will begin on Saturday, June 8, 2024, at 10 a.m. PT, reconvening at 8 a.m. on Sunday, June 9 through Thursday, June 13, 2024. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 10 a.m., Saturday, June 8 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The Highly Migratory Species Workshop and meetings of the Pacific Council and its advisory entities will be held at the Doubletree by Hilton San Diego—Mission Valley, 7450 Hazard Center Drive, San Diego, CA; telephone: (619) 297–5466. Specific meeting information, including directions on joining the meeting, connecting to the Council meeting live stream broadcast, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2418 or (866) 806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The Highly Migratory Species Workshop will take place in person on June 6 and 7, starting at 9 a.m. PT each day and continuing until business for the day is complete. The June 7–13, 2024 meeting of the Pacific Council will take place in person and also be streamed live on the internet. The broadcasts begin initially at 10 a.m. PT Saturday, June 8, and 8 a.m. Sunday, June 9 through Thursday, June 13, 2024. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Pacific Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.3, Proposed Council Meeting Agenda, and will be in the advance June 2024 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, May 17, 2024.

A. Call to Order
1. Opening Remarks
2. Roll Call
3. Agenda
4. Executive Director's Report

B. Open Comment Period
1. Comments on Non-Agenda Items

C. Administrative Matters
1. Council Coordination Committee Update
2. Council Operations and Priorities
3. Legislative Matters
4. Fiscal Matters
5. Approval of Council Meeting Records
6. Membership Appointments and Council Operating Procedures—2025–27 Advisory Body Composition and Respectful Workplace Policies
7. Future Council Meeting Agenda and Workload Planning

D. Habitat Issues
1. Current Habitat Issues

E. Salmon Management
1. Sacramento River Fall Chinook Workgroup—Progress Report
2. Queets River Spring/Summer Chinook Rebuilding Plan—Progress Report

F. Groundfish Management
1. National Marine Fisheries Service Report
2. Monterey Bay National Marine Sanctuary Coral Research and Restoration Closures—Fishery Management Plan (FMP) Amendment Final Action
3. Final Stock Assessment Plan and Terms of Reference
4. Stock Definitions for Species Assessed in 2025 and 2027—Range of Alternatives
5. Fixed Gear Marking and Entanglement Risk Reduction—Final Action
6. 2025–26 Harvest Specifications, Management Measures, and Exempted Fishing Permits—Fishery Management Plan Amendment Final Action
7. Inseason Management—Final Action

H. Cross Fishery Management Plan (FMP)
1. Marine Planning
2. NMFS Regional Equity and Environmental Justice (EEJ) Plan and EEJ Committee—Update

I. Coastal Pelagic Species Management
1. Stock Assessment Terms of Reference and Accepted Practices—Final Action

Workshop and Advisory Body Agendas

The Highly Migratory Species Workshop and Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Pacific Council meetings. Proposed agendas for these meetings will be available on the Pacific Council website, *www.pcouncil.org,* no later than Friday, May 17, 2024.

Schedule of Ancillary Meetings

June 6–7, 2024

Highly Migratory Species Workshop 9 a.m.

Day 1—Friday, June 7, 2024

Groundfish Advisory Subpanel 1 p.m.
Groundfish Management Team 1 p.m.
Habitat Committee 8 a.m.
Salmon Advisory Subpanel (Online) 8 a.m.
Scientific and Statistical Committee 8 a.m.
Legislative Committee 10 a.m.
Budget Committee 1 p.m.
Equity and Environmental Justice Committee 1 p.m.
Enforcement Consultants 2 p.m.

Day 2—Saturday, June 8, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Habitat Committee 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Enforcement Consultants 8 a.m.

Day 3—Sunday, June 9, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 4—Monday, June 10, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 5—Tuesday, June 11, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants (Online) As Necessary

Day 6—Wednesday, June 12, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Enforcement Consultants (Online) As Necessary

Day 7—Thursday, June 13, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery

Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: May 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–11146 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD972]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Mariana Archipelago Fishery Ecosystem Plan (FEP) Guam Advisory Panel (AP), American Samoa Archipelago FEP AP, Hawaii Archipelago FEP AP, and the Mariana Archipelago FEP Commonwealth of the Northern Mariana Islands (CNMI) AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between June 4 and June 8, 2024. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Western Pacific Fishery Management Council (Council) Mariana Archipelago Fishery Ecosystem Plan (FEP) Guam Advisory Panel (AP), American Samoa Archipelago FEP AP, Hawaii Archipelago FEP AP, and the Mariana Archipelago FEP Commonwealth of the Northern Mariana Islands (CNMI) AP meetings will be held in a hybrid format with in-person and remote participation (Webex) options available for the members and the public.

In-person attendance for Mariana Archipelago FEP Guam AP members and public will be hosted at Cliff Pointe, 304 W. O'Brien Drive, Hagatña, GU, 96910.

In-person attendance for the American Samoa Archipelago FEP AP members and public will be hosted at the Tedi of Samoa Suite 208B, P8C6+V2F, Fagotogo Village, AS, 96799.

In person attendance for Hawaii Archipelago FEP AP members and public will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI, 96813.

In-person attendance for Mariana Archipelago FEP CNMI AP members and public will be hosted at BRI Building Suite 205, Kopa Di Oru St., Garapan, Saipan, 96950.

Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Mariana Archipelago FEP Guam AP will meet on Tuesday, June 4, 2024, from 6 p.m. to 8 p.m.; American Samoa FEP AP will meet on Tuesday, June 4, 2024, from 5 p.m. to 7 p.m.; the Hawaii Archipelago FEP AP will meet on Friday, June 7, 2024, from 9 a.m. to 1 p.m.; and the Mariana Archipelago CNMI AP will meet on Saturday, June 8, 2024, from 10 a.m. to 1 p.m. All times listed are local island times.

Public Comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the Mariana Archipelago FEP Guam AP Meeting

Tuesday, June 4, 2024, 6 p.m.–8 p.m. (Chamorro Standard Time)

1. Welcome and Introductions
2. Review of the Last Advisory Panel (AP) Recommendations and Meeting
3. Feedback From the Fleet
4. Guam Fishery Issues and Activities
   A. 2024 Annual Stock Assessment and Fishery Evaluation (SAFE) Guam Module Report
   B. Updates on the Guam Bottomfish Rebuilding Plan
5. National Marine Fisheries Service 2024 to 2025 Marianas Small Boat Survey
6. Updates on the Regional Data Collection Improvement Efforts
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for the American Samoa Archipelago FEP AP Meeting

Tuesday, June 4, 2024, 5 p.m.–7 p.m. (Samoa Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendations and Meeting
3. Feedback From the Fleet
4. American Samoa (AS) Fishery Issues and Activities
   A. 2024 Annual SAFE AS Module Report
   B. Status of the Pacific Remote Island Areas (PRIA) National Marine Sanctuary Proposal
   C. United States Stockholder Engagement on North Pacific Striped Marlin Rebuilding Plan
5. American Samoa Marine Conservation Plan 2024 to 2026
6. Other Business
7. Public Comment
8. Discussion and Recommendations

Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

Friday, June 7, 2024, 9 a.m.–1 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendations and Meeting
3. Feedback From the Fleet
4. Hawaii Fishery Issues and Activities
   A. 2024 Annual SAFE Hawaii Module Report
   B. Options for Specifying Annual Catch Limits for 2024 to 2027
   C. Hawaii Small-Boat Fisheries Project Update
   D. Status of the PRIA and Northwest Hawaiian Island Sanctuary Proposal
   E. US Stakeholder Engagement on North Pacific Striped Marlin Rebuilding Plan
5. Biological Opinion Implementation Working Group Reports
6. Electronic Technologies Steering Committee Updates
7. Other Business
8. Public Comment
9. Discussion and Recommendation

Schedule and Agenda for the Mariana Archipelago FEP CNMI AP Meeting

Saturday, June 8, 2024, 10 a.m.–1 p.m. (Chamorro Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendations and Meeting

3. Feedback From the Fleet
4. CNMI Fishery Issues and Activities
   A. 2024 Annual SAFE CNMI Module Report
   B. Review of the Commercial Bottomfish Permit and Reporting
5. 2023–2026 CNMI Action Plan Updates
6. Other Business
7. Public Comment
8. Discussion and Recommendations

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–11145 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Interagency Marine Debris Coordinating Committee Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual public meeting of the Interagency Marine Debris Coordinating Committee (IMDCC). IMDCC members will discuss Federal marine debris activities, with a particular emphasis on the topics identified in the section on *Matters to Be Considered.*

DATES: The virtual public meeting will be held on June 10, 2024, from 2 p.m. to 3 p.m. eastern time (ET).

ADDRESSES: The meeting will be held virtually using Google Meet. You can connect to the meeting using the website or phone number provided:

Meeting link: *https://meet.google.com/kyy-fnbt-uwk*

Phone: +1 520–485–7666; PIN: 908 178 900#

Attendance will be limited to the first 500 individuals to join the virtual meeting room. Refer to the IMDCC website at *https://marinedebris.noaa.gov/our-work/IMDCC* for the most up-to-date information on the agenda and how to participate.

FOR FURTHER INFORMATION CONTACT: Ya'el Seid-Green, Executive Secretariat, IMDCC, Marine Debris Program; Phone 240–622–5910; Email *yael.seid-green@noaa.gov* or visit the IMDCC website at *https://marinedebris.noaa.gov/our-work/IMDCC.*

SUPPLEMENTARY INFORMATION:

The IMDCC is a multi-agency body responsible for coordinating a comprehensive program of marine debris research and activities among Federal agencies, in cooperation and coordination with non-governmental organizations, industry, academia, States, Tribes, and other nations, as appropriate. Representatives meet to share information, assess and promote best management practices, and coordinate the Federal Government's efforts to address marine debris.

The Marine Debris Act establishes the IMDCC (33 U.S.C. 1954). The IMDCC submits biennial progress reports to Congress with updates on activities, achievements, strategies, and recommendations. NOAA serves as the Chairperson of the IMDCC.

The meeting will be open to public attendance on June 10, 2024, from 2 p.m. to 3 p.m. ET. There will not be a public comment period. The meeting will not be recorded.

Matters To Be Considered

The open meeting will include a presentation from the National Oceanic and Atmospheric Administration's Marine Debris Program on the new IMDCC recommendations for addressing marine debris, and the metrics that the IMDCC will use to analyze the effectiveness of those recommendations. The meeting will also include presentations from IMDCC member agencies on accomplishments and upcoming activities. The agenda topics described are subject to change. The latest version of the agenda will be posted at *https://marinedebris.noaa.gov/our-work/IMDCC.*

Special Accommodations

The meeting is accessible to people with disabilities. Closed captioning will be available. Requests for other auxiliary aids should be directed to Ya'el Seid-Green, Executive Secretariat at *yael.seid-green@noaa.gov* or 240–622–5910 by May 29, 2024.

Scott Lundgren,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–11040 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2024–0022]

Patent and Trademark Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for nominations for the Patent and Trademark Public Advisory Committees.

SUMMARY: The United States Patent and Trademark Office (USPTO)—America's Innovation Agency—is seeking nominations for up to three members of its Patent Public Advisory Committee (PPAC) to advise the Director of the USPTO on patent policy, and for up to three members of its Trademark Public Advisory Committee (TPAC) to advise the Director on trademark policy. Each new member, who can serve remotely, will serve a three-year term starting December 1, 2024. The members represent the interests of the public and the stakeholders of the USPTO.

DATES: Nominations must be electronically transmitted on or before July 5, 2024.

ADDRESSES: Persons wishing to submit nominations will be required to electronically complete the appropriate Public Advisory Committee application form by entering detailed information and qualifications at *https://bit.ly/4d9MlQy* for the PPAC and *https://bit.ly/4aKhecY* for the TPAC.

FOR FURTHER INFORMATION CONTACT: Shirin Bidel-Niyat, Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at 571–272–8600.

SUPPLEMENTARY INFORMATION: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (1999 Act). The 1999 Act established two Public Advisory Committees—the PPAC and the TPAC—to review the policies, goals, performance, budget, and user fees of the USPTO. The America Invents Act Technical Corrections set staggered terms for the members of the Advisory Committees, with each term starting and ending on December 1.

The PPAC and TPAC members shall:

- Advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters involving the policies, goals, performance, budget, and user fees of the USPTO related to patents and trademarks, respectively (35 U.S.C. 5); and
- Within 60 days after the end of each fiscal year: (1) prepare an annual report

on the matters listed above; (2) transmit the report to the Secretary of Commerce (Secretary), the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the USPTO's Official Gazette. *Id.*

Public Advisory Committees

The Public Advisory Committees are each composed of nine voting members who are appointed by the Secretary and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Public Advisory Committee members must be citizens of the United States. Members must also certify that they are not required to register with the Department of Justice as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and that they are not a federally-registered lobbyist. Members are chosen to represent the interests of diverse users of the USPTO and must represent small- and large-entity applicants located in the United States in proportion to the number of applications filed by such applicants. In no case, however, shall members who represent small-entity patent applicants, including small business concerns, independent inventors, and nonprofit organizations, constitute less than 25% of the members of the PPAC. There must also be at least one independent inventor on the PPAC. The Committees must include individuals with a ''substantial background and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). Each of the Public Advisory Committees also includes three non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the PPAC and the TPAC

Each newly appointed member of the PPAC and the TPAC will serve for a three-year term that begins on December 1, 2024, and ends on December 1, 2027. As required by the 1999 Act, members of the PPAC and the TPAC will receive compensation for each day (including travel time) they attend meetings or engage in the business of their Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under 5 U.S.C. 5314. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or their regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703.

Applicability of Certain Ethics Laws

Public Advisory Committee members are Special Government Employees within the meaning of 18 U.S.C. 202. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than 60 days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within 30 days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that comes before the member's committee and that involves at least one specific party. 18 U.S.C. 205(c); see also 18 U.S.C. 207 for post-membership bars. Also, a member must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the PPAC and the TPAC

Meetings of each Public Advisory Committee will take place at the call of the respective Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, telephonically, online, or by other appropriate means. The meetings of each Public Advisory Committee will be open to the public, but each Public Advisory Committee may, by majority vote, meet in an executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in Public Advisory Committee business through the internet.

Katherine K. Vidal,

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

[FR Doc. 2024–10748 Filed 5–20–24; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER FINANCIAL PROTECTION BUREAU

Academic Research Council Meeting

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Academic Research Council (ARC or Council) of the Consumer Financial Protection Bureau (CFPB or Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Friday, June 7, 2024, from approximately 12:45 p.m. to 3 p.m., eastern time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Advisory Board and Councils, External Affairs Division, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the of the ARC Charter provides that pursuant to the executive and administrative powers conferred on the CFPB by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director of the CFPB renews the discretionary Academic Research Council under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10.

Section 3 of the ARC Charter states: ''The committee will (1) provide the CFPB with advice about its strategic research planning process and research agenda, including views on the research that the CFPB should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; and, (2) provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions; and, (3) serve as peer reviewers of policy-determinative research conducted by the CFPB.''

II. Agenda

The ARC will discuss broad policy matters related to the Bureau's Research Agenda and general scope of authority.

If you require any additional reasonable accommodations(s) in order to attend this event, please contact the Reasonable Accommodations team at *CFPB_ReasonableAccommodations@cfpb.gov* 48 hours prior to the start of this event.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the ARC members for consideration. Individuals who wish to attend this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_czLnrnHtCNwPrf0.*

III. Availability

The Council's agenda will be made available to the public on Friday, May 24, 2024, via *consumerfinance.gov.*

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2024–11082 Filed 5–20–24; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–28]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 22–28 with attached Policy Justification and Sensitivity of Technology.

Dated: May 15, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

May 26, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-28, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost $385 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001–FR–C

Transmittal No. 22–28

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$350 million
Other	$ 35 million
TOTAL	$385 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
- Twenty (20) M142 High Mobility Artillery Rocket System (HIMARS)
- Thirty (30) M30A2 Guided Multiple Launch Rocket System (GMLRS)
- Thirty (30) Alternative Warhead (AW) Pods with Insensitive Munitions Propulsion Systems (IMPS)
- Thirty (30) M31A2 GMLRS Unitary (GMLRS–U) High Explosive Pods with IMPS
- Thirty (30) XM403 Extended Range (ER)-GMLRS AW Pods
- Thirty (30) EM404 ER GMLRS Unitary Pods
- Ten (10) M57 Army Tactical Missile System (ATACMS)

Non-MDE:
- Also included are Reduced Range Practice Rocket Pods (RRPRP); Vehicular Intercom System (AN/VIC–3) 3-Station; radio communication mounts; machine gun mounts; battle management system vehicle integration kits;

wheel guards; ruggedized laptops; training equipment publications; spare and repair parts; support equipment; tools; test equipment; technical data; U.S. Government and Contractor support; technical and logistical support services; and other related elements of program and logistic support.

(iv) *Military Department:* Army (AT–B–UMK)

(v) *Prior Related Cases, if any:* AT–B–UMJ, AT–B–UKI

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* May 26, 2022

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—HIMARS Launchers

The Government of Australia has requested to buy twenty (20) M142 High Mobility Artillery Rocket Systems (HIMARS); thirty (30) M30A2 Guided Multiple Launch Rocket Systems (GMLRS); thirty (30) Alternative Warhead (AW) Pods with Insensitive Munitions Propulsion Systems (IMPS); thirty (30) M31A2 GMLRS Unitary (GMLRS–U) High Explosive Pods with IMPS; thirty (30) XM403 Extended Range (ER)-GMLRS AW Pods; thirty (30) EM404 ER GMLRS Unitary Pods; and ten (10) M57 Army Tactical Missile System (ATACMS). Also included are Reduced Range Practice Rocket Pods (RRPRP); Vehicular Intercom System (AN/VIC–3) 3-Station; radio communication mounts; machine gun mounts; battle management system vehicle integration kits; wheel guards; ruggedized laptops; training equipment publications; spare and repair parts; support equipment; tools; test equipment; technical data; U.S. Government and Contractor support; technical and logistical support services; and other related elements of program and logistic support. The total estimated program cost is $385 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve Australia's capability to meet current and future threats, and will enhance interoperability with U.S. forces and other allied forces. Australia will use the capability to strengthen its homeland defense and provide greater security for its critical infrastructure. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Lockheed Martin Inc., Bethesda, MD; Chelton Inc., Marlow, United Kingdom; and L3 Harris Corp., Melbourne, FL. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will require the assignment of two (2) U.S. Government and five (5) U.S. contractor representatives in Australia for a period of one year.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22–28

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The M142 High Mobility Artillery Rocket System (HIMARS) is a C–130 transportable wheeled launcher mounted on a 5-ton Family of Medium Tactical Vehicles truck chassis. HIMARS is the modern Army-fielded version of the Multiple Launch Rocket System (MLRS) M270 launcher, and can fire all of the MLRS Family of Munitions (FOM) including Guided Multiple Launch Rocket System (GMLRS) variants and the Army Tactical Missile System (ATACMS). Utilizing the MLRS FOM, the HIMARS can engage targets between 15 and 300 kilometers with Global Positioning System (GPS)-aided precision accuracy.

2. The M31A2 GMLRS Unitary is the Army's primary munition for units fielding the M142 HIMARS and M270Al MLRS Launchers. The M31 Unitary is a solid propellant artillery rocket that uses GPS/Precise Positioning Service (PPS)-aided inertial guidance to accurately and quickly deliver a single high-explosive blast fragmentation warhead to targets at ranges from 15–70 kilometers. The rockets are fired from a launch pod container that also serves as the storage and transportation container for the rockets. Each rocket pod holds six (6) total rockets.

3. The M30A2 GMLRS Alternative Warhead shares a greater than 90% commonality with the M31A1 Unitary. The primary difference between the GMLRS–U and GMLRS–AW is the replacement of the Unitary's high explosive warhead with a 200-pound fragmentation warhead of pre-formed tungsten penetrators which is optimized for effectiveness against large area and imprecisely located targets. The munitions otherwise share a common motor, GPS/PPS-aided inertial guidance and control system, fusing mechanism, multi-option height of burst capability, and effective range of 15–70km.

4. The M57 ATACMS-Unitary is a conventional, semi-ballistic missile that utilizes a 500-pound high explosive warhead. It has an effective range of between 70 and 300 kilometers, and has increased lethality and accuracy over previous versions of the ATACMS due to a GPS/PPS aided navigation system.

5. The Extended Range (ER) GMLRS provides a persistent, responsive, all-weather, rapidly deployed, long range, surface-to surface, area- and point-precision strike capability. The XM403 Alternative Warhead (AW) carries a 200-pound fragmentation assembly filled with high explosives which, upon detonation, accelerates two layers of preformed penetrators optimized for effectiveness against large area and imprecisely located targets. The XM404 Unitary variant is a 200-pound class unitary with a steel blast-fragmentation case, designed for low collateral damage against point targets. The ER GMLRS maintains the accuracy and effectiveness demonstrated by the baseline GMLRS out to a maximum range of 150 km while also including a new Height of Burst (HOB) capability.

6. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security

objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2024–11038 Filed 5–20–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Military Family Readiness Council; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce the following Federal advisory committee meeting of the DoD Military Family Readiness Council (MFRC) will take place.

DATES: Open to the public, Thursday, May 30, 2024, from 1 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held by videoconference. Participant access information will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility'').

FOR FURTHER INFORMATION CONTACT: Vesen L. Thompson, (703) 571–2360 (voice), OSD Pentagon OUSD P–R Mailbox Family Readiness Council, *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* (Email). Mailing address: Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), 1500 Defense Pentagon, Washington, DC 20301–1500, Room 5A726. Website: *http://www.militaryonesource.mil/those-who-support-mfrc.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense, the Department of Defense Military Family Readiness Council was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its May 30, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and title 41, Code of Federal Regulations (CFR), section 102–3.140, and section 102–3.155.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available at the DoD MFRC website: *https://www.militaryonesource.mil/mfrc.*

Materials presented in the meeting may also be obtained on the DoD MFRC website.

Purpose of the Meeting: The purpose of the meeting is for the DoD MFRC to receive briefings and have discussions on topics related to Military Family Readiness Programs and Activities.

Agenda: Thursday, May 30, 2024, from 1 p.m. to 3:30 p.m.—Welcome, Introductions, Announcements, Briefings on Changes to Healthcare Policy and Implication for Military Families.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 1 p.m. to 3:30 p.m. on May 30, 2024. The meeting will be held by videoconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by contacting DoD MFRC at (*osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil*) or by contacting Mr. Vesen Thompson at (703) 571–2360 (voice), no later than Monday, May 27, 2024. Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Vesen Thompson no later than Monday, May 27, 2024, so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DoD MFRC; however, email submissions are preferred. Persons interested in providing a written statement for review and consideration by DoD MFRC members attending the May 30, 2024, meeting, are encouraged to do so at *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil*). Written statements received after this date will be provided to DoD MFRC members in preparation for the next MFRC meeting. The Designated Federal Officer (DFO) will review all timely submissions and ensure submitted written statements are provided to DoD MFRC members prior to the meeting that is subject to this notice. The DFO will review all timely submissions with the DoD MFRC Chair and ensure they are provided to the members of the DoD MFRC.

Those who make submissions are requested to avoid including personally identifiable information such as names of adults and children, phone numbers, addresses, Social Security Numbers and other contact information within the body of the written statement.

Dated: May 13, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–11076 Filed 5–20–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0020]

Science and Technology Reinvention Laboratory Personnel Demonstration Project Program

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: This notice provides new authorities to all Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration (Demo) Projects.

SUMMARY: STRLs may implement innovative approaches to attract and retain exceptional talent who are participating in Demo projects. The flexibilities described herein allow the STRLs to better manage their workforce by authorizing: flexible extended temporary promotion and temporary reassignment for supervisory and team leader positions; a recruitment incentive in the form of time-off awards (time off from duty without loss of pay or charge to leave); retention counter-offers for high performing employees in scientific, technical, or administrative positions; and certain awards management authorities for STRL directors. The flexibilities and procedures described herein are in addition to and do not supersede or cancel flexibilities described in previously published STRL **Federal Register** Notices (FRNs).

DATES: Implementation of this **Federal Register** notice will begin no earlier than May 21, 2024.

FOR FURTHER INFORMATION CONTACT: Department of Defense:

- Office of the Under Secretary of Defense for Research and Engineering, Defense Research Enterprise: Dr. Jagadeesh Pamulapati, 571–372–6372, *Jagadeesh.Pamulapati.civ@mail.mil.*

Department of the Air Force:
- Air Force Research Laboratory: Ms. Rosalyn Jones-Byrd, 937–656–9747, *Rosalyn.Jones-Byrd@us.af.mil.*
- Joint Warfare Analysis Center: Ms. Amy Balmaz, 540–653–8598, *Amy.T.Balmaz.civ@mail.mil.*

Department of the Army:
- Army Futures Command: Ms. Marlowe Richmond, 512–726–4397, *Marlowe.Richmond.civ@army.mil.*
- Army Research Institute for the Behavioral and Social Sciences: Dr. Scott Shadrick, 254–288–3800, *Scottie.B.Shadrick.civ@army.mil.*
- Combat Capabilities Development Command Armaments Center: Ms. Pota Kripotos, 973–724–9165, *Pota.Kripotos.civ@army.mil.*
- Combat Capabilities Development Command Army Research Laboratory: Mr. Christopher Tahaney, 410–278–9069, *Christopher.S.Tahaney.civ@army.mil.*
- Combat Capabilities Development Command Aviation and Missile Center: Ms. Nancy Salmon, 256–876–9647, *Nancy.C.Salmon2.civ@army.mil.*
- Combat Capabilities Development Command Chemical Biological Center: Ms. Patricia Milwicz, 410–417–2343, *Patricia.L.Milwicz.civ@army.mil.*
- Combat Capabilities Development Command, Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center: Ms. Angela Clybourn, 443–395–2110, *Angela.M.Clyborn.civ@army.mil.*
- Combat Capabilities Development Command Ground Vehicle Systems Center: Ms. Jennifer Davis, 586–306–4166, *Jennifer.L.Davis1.civ@army.mil.*
- Combat Capabilities Development Command Soldier Center: Ms. Sarah Palmer, 508–206–3421, *Sarah.B.Palmer.civ@army.mil.*
- Engineer Research and Development Center: Dr. Lucy Priddy, 601–415–7845, *Lucy.P.Priddy@usace.army.mil.*
- Medical Research and Development Command: Ms. Linda Krout, 301–619–7276, *Linda.J.Krout.civ@health.mil.*
- Technical Center, Space and Missile Defense Command: Dr. Chad Marshall, 256–955–5697, *Chad.J.Marshall.civ@army.mil.*

Department of the Navy:
- Naval Air Warfare Center, Weapons Division and Aircraft Division: Mr. Richard Cracraft, 760–939–8115, *Richard.A.Cracraft2.civ@us.navy.mil.*
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center: Ms. Kelly Mitchell, 508–206–3430, *Kelly.L.Mitchell16.civ@us.navy.mil.*
- Naval Information Warfare Centers:
  - Naval Information Warfare Center Atlantic: Mr. Michael Gagnon, 843–218–3871, *Michael.L.Gagnon2.civ@us.navy.mil.*
  - Naval Information Warfare Center Pacific: Sharmeka Speights, 619–553–6282, *Sharmeka.m.speights.civ@us.navy.mil.*
- Naval Medical Research Center: Dr. Jill Phan, 301–319–7645, *Jill.C.Phan.civ@mail.mil.*
- Naval Research Laboratory: Ms. Ginger Kisamore, 202–731–8100, *Ginger.Kisamore@nrl.navy.mil.*
- Naval Sea Systems Command Warfare Centers: Ms. Diane Brown, 215–897–1619, *Diane.J.Brown.civ@us.navy.mil.*
- Office of Naval Research: Ms. Margaret J. Mitchell, 703–588–2364, *Margaret.J.Mitchell@navy.mil.*

Marine Corps:
- Marine Corps Tactical Systems Support Activity: Lissa Henriksen, 760–587–6893, *Lissa.Lalonde@usmc.mil.*

SUPPLEMENTARY INFORMATION:

1. Background

Through the USD(R&E), the Secretary exercises the authorities granted to the Office of Personnel Management under 5 United States Code (U.S.C.) 4703 to conduct personnel demonstration projects at DoD laboratories designated as STRLs. All STRLs authorized pursuant to 10 U.S.C. 4121 may use the provisions described in this FRN for employees participating in the Demo project. STRLs implementing these flexibilities must have an approved personnel demonstration project plan published in an FRN and must fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures (IOPs) as appropriate.

The 22 current STRLs are:
- Air Force Research Laboratory
- Joint Warfare Analysis Center
- Army Futures Command
- Army Research Institute for the Behavioral and Social Sciences
- Combat Capabilities Development Command Armaments Center
- Combat Capabilities Development Command Army Research Laboratory
- Combat Capabilities Development Command Aviation and Missile Center
- Combat Capabilities Development Command Chemical Biological Center
- Combat Capabilities Development Command, Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- Combat Capabilities Development Command Ground Vehicle Systems Center
- Combat Capabilities Development Command Soldier Center
- Engineer Research and Development Center
- Medical Research and Development Command
- Technical Center, US Army Space and Missile Defense Command
- Naval Air Systems Command Warfare Centers
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers
- Office of Naval Research
- Marine Corps Tactical Systems Support Activity

2. Summary of Comments

On March 15, 2024, the DoD published a notice (89 FR 18914–18921) concerning four new flexibilities, for a 30-day public comment period. The public comment period ended on April 15, 2024. One commenter commented on the flexibility to allow time-off awards as a recruitment incentive. Specifically, the commenter suggested that time-off awards be used as a retention incentive as well, allowing the STRL Director to use time-off in lieu of a bonus as part of the assessment system.

In response, the Department notes that some STRLs currently allow for time-off as part of their assessment process and other STRLs could adopt that process if interested.

3. Overview

I. Introduction

A. Purpose

This FRN provides new personnel management flexibilities designed to enable the STRL Directors to be more agile and competitive in attracting, hiring, and retaining world-class candidates in science, technology, engineering, and mathematics career fields and in career fields that directly support the STRL mission. Specifically, this notice provides a new approach to assigning employees to supervisory and team leader positions within the STRL Demo project by authorizing a time-limited, renewable temporary promotion and a renewable temporary reassignment authority; time-off awards as a recruitment incentive for employees to accept positions in the Demo project; retention counter-offers for high performing employees in scientific, technical, or administrative positions

within the STRL Demo project; and awards management authority for STRL Directors.

The authority to offer time-limited supervisory and team leader positions to employees participating in the Demo project will enable STRL Directors to better manage their workforce by (1) taking individual career preferences into consideration; (2) increasing efforts in succession planning; (3) allowing for periodic assessments of the supervisory talent pool; (4) allowing for better utilization of supervisory and leadership skills and experience; (5) enhancing organizational planning; and (6) synchronizing timelines for supervisory and leadership continuity. Additionally, it provides greater flexibilities to employees by increasing flexibility in individual development and providing more pathways to developmental assignments to broaden and deepen their experiential base.

The authority to provide time-off awards as a recruitment incentive to employees participating in the Demo project enables the STRLs to better compete with industry where time-off is often part of recruitment packages. Such an incentive may be especially attractive to candidates from outside of Government who value time off and typically would not accumulate a significant balance of paid leave for some time.

The authority to provide retention counteroffers to high performing employees participating in the Demo project in any career field, who have critical skills, and present evidence of alternative employment opportunities with higher compensation, will enable the STRLs to continue to meet mission requirements by retaining key employees.

The authority for STRL Directors to manage award funding for employees participating in the Demo project, consistent with the STRL's budget, will enable STRLs to fully utilize their contribution- or performance-based pay systems by providing timely award funding for pay pools which are often administered on different cycles than those applicable to employees who are not participating in a Demo project.

B. Required Waivers to Law and Regulation

Waivers and adaptations of certain title 5, U.S.C. and title 5, Code of Federal Regulations (CFR) provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under an approved STRL Demonstration project. Appendix A lists waivers needed to enact authorities described in this FRN. Nothing in this plan is intended to preclude STRLs from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

C. Problems With Present System

Despite the authorities already available to STRLs, some laboratories still have difficulty recruiting and retaining supervisors or team leaders within the organization. STRLs need the ability to shape the mix of skills and expertise to position the most qualified personnel in a given position to meet new research and development missions. The problem with the traditional system is that it does not support flexibility in organizational and succession planning. Time-limited supervisory and team leader positions will enable management to periodically evaluate these positions, taking into consideration mission needs, as well as employee career development, and organizational succession planning. It will also offer experiential opportunities for employees interested in becoming supervisors and team leaders. This dynamic will support individual development, organizational planning, synchronizing timelines for supervisory/leadership continuity, and calibrating career expectations vs. mission needs. Similar to the Flexible Extended Temporary Promotion Authority for ST and Senior Scientific Technical Manager positions documented in the Air Force Research Laboratory FRN, 82 FR 38896, STRLs need the flexibility to offer temporary promotions and temporary reassignments not to exceed five years, with the ability to extend in no longer then five-year increments, for all supervisory and team leader positions.

STRLs need numerous flexible tools to use in their battle for talent. Current recruitment incentives involve monetary payments only and offer no means to provide additional paid time off from duty as a recruitment incentive. Providing a time-off award, instead of or in addition to other incentives, will enable STRLs to better compete for critical talent.

Retaining critical talent is also a priority for STRLs. The retention incentive available under 5 CFR part 575 subpart C is limited to 25 percent of an employee's basic pay and requires documented analysis of employment trends and labor market factors; quality and availability of potential sources of employees; the success of recent efforts to recruit candidates; retention of similar employees; and other factors. This monetary limit and time-consuming process prevents STRLs from effectively countering recruitment offers from the private sector. Similar to the retention counteroffer for employees with critical scientific or technical skills documented in the Technical Center of the U.S. Army Space and Missile Defense Command FRN, 84 FR 49255, this retention counteroffer for all STRL employees participating in the Demo project, regardless of career field, will allow the STRLs to retain critical talent by quickly approving an increase to basic pay and/or an incentive up to 50 percent of an employee's basic pay in circumstances where employees with critical skills receive an offer of employment with higher compensation.

Finally, the timing of DoD awards guidance is generally consistent with the Defense Performance Management and Appraisal Program which uses an assessment cycle that ends in the March/April timeframe. Because STRL performance and contribution-based systems often use different assessment cycles and issue special act and notable achievement awards during the first quarter of the fiscal year, independent authority to issue awards will promote greater efficiency in the administration of STRL Demo projects.

D. Participating Organizations and Employees

All DoD laboratories designated as STRLs pursuant to 10 U.S.C. 4121(b), as well as any additional laboratories designated as STRLs by the Secretary of Defense, through the USD(R&E), with approved personnel demonstration project plans published in FRNs may use the provisions described in this FRN. Absent another statutory authority to provide these flexibilities, the provisions do not apply to employees who are not candidates for or incumbents of positions participating in the demo projects authorized by 10 U.S.C. 4121, to include prevailing rate employees (as defined by 5 U.S.C. 5342(a)(2)) and senior executives (as defined by section 3132(a)(3) of such title). STRLs implementing these flexibilities must first fulfill any collective bargaining obligations.

II. Personnel System Changes

A. Description and Implementation

1. Flexible Temporary Assignments

An STRL Director may approve flexible temporary promotions or reassignments to supervisory and team leader positions for not more than five years, with the ability to extend without limit in no more than five-year increments for candidates who are current Federal employees participating

in the demo project. The candidates must meet the Office of Personnel Management Qualification Standard for the position. The initial flexible temporary promotion must be made using competitive procedures. Prior to extending a temporary promotion or reassignment or making the action permanent, management will decide based on mission needs, employee career development, and organizational succession planning on whether the employee should continue in the position on a temporary or permanent basis. If not extended on a temporary basis or made permanent, the employee will return to the position held prior to the temporary assignment or to a position within the STRL comparable in duties and pay band to the position held before the assignment. Upon termination of the temporary promotion or reassignment, pay will be set in accordance with the STRL's applicable pay setting rules and internal operating procedures. To be converted to a permanent supervisory or team leader position, the employee must: (1) have been notified in writing at the time of the initial action of the possibility of the temporary assignment being made permanent at a later date; (2) served a minimum of one year of continuous service in the temporary position; and (3) have at least a successful or equivalent performance rating in any applicable supervisory/leadership performance element. STRLs will document their plans and processes in IOPs.

2. Authority To Provide Time-off as a Recruitment Incentive

An STRL Director may provide a newly hired or newly converted participant in the demo project up to 80 hours of time-off from duty, without loss of pay or charge to leave, as a recruitment incentive, to be used within one year. This recruitment incentive will be processed in the same manner as a time-off award available under the authority in 5 U.S.C. chapter 45, but it is not provided pursuant to that authority and is not subject to otherwise applicable limits on the use of that authority. The time-off provided as a recruitment incentive may not be converted to cash payment and is forfeited if not used within 12 months after it is posted to the employee's leave account. STRLs may require a service agreement when offering this recruitment incentive. STRLs will document in IOPs the criteria for determining the amount of paid time off that may be provided as a recruitment incentive.

3. Retention Counteroffers

STRL Directors may offer a retention counteroffer to high performing employees participating in the demo project, with critical scientific, technical, or administrative skills, in any career field, who present credible evidence of an alternative employment opportunity with higher compensation. Such employees may be provided increased basic pay (up to the top of the pay band/cap within a pay band) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. Retention counteroffers, either in the form of a base pay increase and/or a lump sum payment, count toward the Executive Level I aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. STRLs may require a service agreement when offering this retention counteroffer. Further details will be published in STRL IOPs.

4. STRL Award Management Authority

STRL compensation strategies develop and foster a culture of recognition. Strategic use of awards and recognition throughout the year adds value to the STRLs and supports retention of high performing/contributing employees. STRL Directors manage the workforce strength, structure, positions, and compensation without regard to any limitation on appointments, positions, or funding in a manner consistent with the budget available. STRL Directors will execute contribution/performance-based payouts, awards and bonuses, and non-ratings-based awards and bonuses for the demo workforce consistent with demo project plans and available funds budgeted for that purpose. Unless directed or authorized by the USD(R&E), in coordination with the Under Secretary of Defense for Personnel and Readiness, DoD Components will not impose additional management limitations on the payments of contribution/performance-based payouts, awards and bonuses, and non-ratings-based awards and bonuses.

B. Evaluation

Procedures for evaluating these authorities will be incorporated into the STRL demonstration project evaluation processes conducted by the STRLs, OUSD(R&E), or Component headquarters, as appropriate.

C. Reports

STRLs will track and provide information and data on the use of these authorities when requested by the Component headquarters or OUSD(R&E).

Appendix A: Required Waivers to Laws and Regulations

Title 5, United States Code	Title 5, Code of Federal Regulations
5 U.S.C. 45, subchapter 1—Awards for Superior Accomplishments. Waived to the extent necessary to allow the STRL Director to implement the flexibilities in this **Federal Register** and provide paid time-off as a recruitment incentive, provide retention and other incentive awards, and provide contribution- and performance-based payouts, as described in this FRN.	5 CFR part 335, section 335.102(f)—Agency authority to promote, demote, or reassign. Waived to the extent necessary to allow extensions of temporary promotions and reassignments as described in this **Federal Register** Notice. 5 CFR part 451, subpart A—Agency Awards. Waived to the extent necessary to allow the STRL Director to implement the flexibilities in this **Federal Register** and provide paid time-off as a retention incentive, provide retention incentives and other incentive awards, and execute contribution and performance-based payouts, as described in this FRN. 5 CFR part 575, subpart A and subpart C—Recruitment and Retention Incentives. Waived to the extent necessary to allow the STRL Director to implement the recruitment and retention flexibilities as described in this **Federal Register** notice, to include paying a retention counteroffer up to 50 percent of basic pay to retain high performing employees and to determine whether a service agreement is required. Criteria for these determinations will be as prescribed in 5 U.S.C. 5754 unless otherwise specified in this FRN.

Appendix B. Authorized STRLs and Federal Register Notices

STRL	Federal Register Notice
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076.
Joint Warfare Analysis Center	85 FR 29414.
Army Futures Command	89 FR 13548.
Army Research Institute for Behavioral and Social Sciences	85 FR 76038.
Combat Capabilities Development Command Armaments Center	76 FR 3744.
Combat Capabilities Development Command Army Research Laboratory.	63 FR 10680.
Combat Capabilities Development Command Aviation and Missile Center.	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142.
Combat Capabilities Development Command Chemical Biological Center.	74 FR 68936.
Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center.	66 FR 54872.
Combat Capabilities Development Command Ground Vehicle Systems Center.	76 FR 12508.
Combat Capabilities Development Command Soldier Center	74 FR 68448.
Engineer Research and Development Center	63 FR 14580 amended by 65 FR 32135.
Medical Research and Development Command	63 FR 10440.
Technical Center, US Army Space and Missile Defense Command	85 FR 3339.
Naval Air Systems Command Warfare Centers	76 FR 8530.
Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center.	86 FR 14084.
Naval Information Warfare Centers, Atlantic and Pacific	76 FR 1924.
Naval Medical Research Center	Not yet published.
Naval Research Laboratory	64 FR 33970.
Naval Sea Systems Command Warfare Centers	62 FR 64050.
Office of Naval Research	75 FR 77380.
Marine Corps Tactical Systems Support Activity	Not yet published.

Dated: May 16, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–11142 Filed 5–20–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Meeting Notice; Correction

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice; correction.

SUMMARY: The National Assessment Governing Board (Governing Board) published a document in the **Federal Register** on Friday, May 3, 2024 announcing the schedule and proposed agenda of the May 16–17, 2024 quarterly meeting of the Governing Board. The meeting agenda has been revised to reflect the below changes to the Thursday and Friday sessions of the Governing Board meeting.

FOR FURTHER INFORMATION CONTACT: Angela Scott (202) 357–7502.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of May 3, 2024, in FR Doc. 2024–09695, at 89 FR 36782–236783, the agenda has been revised to reflect new times for these meetings. The AI and Large-Scale Assessment: Perspectives from PISA (the Programme for International Student Assessment) session scheduled for Thursday, May 16, 2024, from 11:00 a.m. to 12:00 p.m. will now be held on Friday, May 17, 2024, from 11:00 a.m.–12:00 p.m. The member discussion scheduled for Friday, May 17, 2024, from 11:45 a.m. to 12:15 p.m. will be held on Thursday, May 16, 2024, from 2:50 p.m. to 3:20 p.m.

The meeting will end at 5:30 p.m. which is 30 minutes earlier than the originally published end time of 6:00 p.m.

Lesley A. Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U. S. Department of Education.

[FR Doc. 2024–11160 Filed 5–20–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–FSA–2024–0062]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled the ''National Student Loan Data System (NSLDS)'' (18–11–06). The information contained in this system is maintained for various purposes relating to aid applicants and recipients. These include determining aid applicants' and recipients' eligibility for Federal student financial assistance under the programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA); assisting institutions of higher education participating in and administering the title IV, HEA programs by verifying the eligibility of aid recipients for, and tracking, Federal student loans; and assisting the Department's oversight and administration of the title IV, HEA programs, including evaluating their effectiveness.

DATES: Submit your comments on this modified system of records notice on or before June 20, 2024.

This modified system of records notice will become applicable upon publication in the **Federal Register** on May 21, 2024, except for the new and modified routine uses (1)(c), (1)(o), and (1)(q) that are outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM,

INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' which will become applicable on June 20, 2024, unless they need to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at regulations.gov. However, if you require an accommodation or cannot otherwise submit your comments via regulations.gov, please contact the program contact listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Valerie Sherrer, Director, Partner System Integration Division, Program Technical and Business Support, Partner Participation and Oversight Directorate, Federal Student Aid, U.S. Department of Education, UCP, 830 First St. NE, room 41F1, Washington, DC 20202–5454. Telephone: (202) 377–3547. Email: *Valerie.Sherrer@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

In accordance with the Privacy Act, the Department proposes to modify the system of records notice entitled, ''National Student Loan Data System (NSLDS)'' (18–11–06), which was last published in full in the **Federal Register** on June 28, 2023 (88 FR 41934).

The Department is modifying purpose (2) in the section entitled ''PURPOSE(S) OF THE SYSTEM'' relating to applicants and recipients of aid under title IV of the HEA to remove and replace ''gainful employment programs'' with ''educational programs'' to reflect that the Financial Value Transparency (FVT) requirements apply to educational programs as defined in 34 CFR 600.2. This includes programs subject to the Gainful Employment (GE) requirements.

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' relating to institutions of higher education (also referred to herein as ''educational institutions'' or ''postsecondary institutions'') participating in and administering the title IV, HEA programs as follows:

(1) Purpose (12) is updated to reflect the inclusion of additional educational programs subject to FVT requirements that are not subject to GE requirements by removing and replacing ''a gainful employment program for the purposes of establishing whether a particular gainful employment program is successfully preparing students to be gainfully employed and making this information available to the educational institution'' with ''an educational program for the purposes of monitoring program outcomes and compiling information related to Financial Value Transparency or Gainful Employment to be made available to educational institutions and to the general public;'' and

(2) Purpose (14) is modified to also reflect the inclusion of additional educational programs subject to FVT requirements but not GE requirements by removing and replacing ''gainful employment'' with ''educational programs.''

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' relating to the Department's oversight and administration of title IV, HEA programs by adding new purpose (18) to support the investigation of possible fraud or abuse and to detect and prevent fraud or abuse.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' as follows:

(1) Category (5) is modified to remove and replace ''for students who began a program of study that prepares them for gainful employment in a recognized occupation pursuant to sections 1001 and 1002 of the HEA ('gainful employment program'), student identifiers including the student's SSN, date of birth, and name, student enrollment information including the Office of Postsecondary Education identification number (OPE ID number) of the institution, the CIP code for the gainful employment program in which the student enrolled, and, if the student completed the program, the completion date and the CIP code of the completed program, the level of study, the amount of the student's private educational loan debt, the amount of institutionally provided financing owed by the student, and whether the student matriculated to a higher credentialed program at the same institution or another institution'' with ''for students who began an educational program, student identifiers including the student's SSN, date of birth, and name; student enrollment information including the Office of Postsecondary Education identification number (OPE ID number) of the institution, and the CIP code and credential level for the educational program in which the student enrolled; the student's enrollment status, annual cost of attendance (COA), total tuition and fees assessed, tuition residency status, total annual allowance for books, supplies, equipment, housing, and food from their COA, amount of institutional grants and scholarships disbursed, amount of other State, Tribal, or private grants disbursed, and the amount of any private educational loans disbursed; and, if the student completed or withdrew from the program, the completion or withdrawal date, the total amount the student received from private education loans, the student's total amount of institutional debt, the student's total amount of tuition and fees assessed, the student's total amount of allowances for books, supplies, and equipment from the student's COA for each award year, and the total amount of institutional grants and scholarships disbursed to the student.'' These changes are to implement the institutional and student-level reporting required by the FVT regulation; and

(2) Category (6) is modified to remove and replace ''graduates'' with ''completers'' and the references to ''gainful employment program'' with ''educational program,'' and to delete ''regardless of whether they completed

the program.'' These changes are to align the language of Category (6) with the language of the FVT regulation and to implement the FVT regulation that requires aggregated income information from all educational programs, not just gainful employment programs.

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' as follows:

(1) Routine use (1)(c) is modified to remove and replace ''To determine if educational programs lead to gainful employment in a recognized occupation, the Department may disclose records to educational institutions'' with ''To monitor program outcomes and compile information related to financial value transparency or gainful employment, the Department may disclose records to educational institutions.'' These changes are to implement the FVT regulation that may result in disclosures by the Department of FVT information to educational institutions as part of monitoring program outcomes and compiling information;

(2) Routine use (1)(o) is modified by adding ''and to conduct testing that the Department has determined is necessary to obtain such data'' after ''title IV, HEA program assistance'' to add that the Department may conduct testing as part of obtaining data needed to assist the Department in evaluating the effectiveness of an institution's education programs and to provide the public with greater transparency about the level of economic return of an educational institution and their programs that receive title IV, HEA program assistance; and

(3) Routine use (1)(q) is added to permit disclosures to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies to support the investigation of possible fraud or abuse and to detect and prevent fraud or abuse in title IV, HEA program funds.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid, U.S. Department of Education (Department) publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

National Student Loan Data System (NSLDS) (18–11–06).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Student Aid (FSA), U.S. Department of Education, Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

Amazon Web Services (AWS) Government Cloud, 410 Terry Ave., North Seattle, WA 98109–5210. (This is the hosting center for the NSLDS application, where all electronic NSLDS information is processed and maintained.)

Accenture, 22451 Shaw Rd., Sterling, VA 20166–4319. (This is Accenture's main program office.)

Accenture DC, 820 First St. NE, Washington, DC 20202–4227. (This location is an alternate Accenture work site to support NSLDS.)

Accenture Federal Services, 10931 Laureate Dr., San Antonio, TX 78249. (This location is an alternate Accenture work site to support NSLDS.)

NTT Global Data Centers Americas, 44664 Guilford Dr., Ashburn, VA 20147 and 2008 Lookout Dr., Garland, TX 75044. (NSLDS call recordings are maintained at these locations.)

Oracle Service Cloud, 500 Eldorado Blvd., Broomfield, CO 80021. (Provides customer case management and reporting capabilities to NSLDS Help Desk Customer Service Representatives (CSRs) and has the capability to track and maintain NSLDS inquiries, which allows CSRs to respond to these cases/inquiries.)

The following three listings are the locations of the NSLDS Customer Service Centers:

ASM Research, 4050 Legato Rd., #1100, Fairfax, VA 22033;

Senture, LLC, 4255 W. Highway 90, Monticello, KY 42633–3398; and

Veteran Call Center, LLC, 53 Knightsbridge Rd., Suite 216, Piscataway, NJ 08854–3925.

SYSTEM MANAGER(S):

Director, Partner Systems Integration Division, Program Technical and Business Support Group, Partner Participation and Oversight Directorate, Federal Student Aid, U.S. Department of Education, UCP, 830 First Street NE, room 41F1, Washington, DC 20202–5454.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority under which the system is maintained includes sections 101, 102, 132(i), 485, and 485B of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001, 1002, 1015a(i), 1092, and 1092b), section 431(2) and (3) of the General Education Provisions Act (20 U.S.C. 1231a(2)–(3)), and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency). The collection of Social Security numbers (SSNs) of individuals who are covered by this system is authorized by 31 U.S.C. 7701 and Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is maintained for the following purposes relating to applicants and recipients of aid under title IV of the HEA:

(Note: Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when an aid recipient's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including, but not limited to, discharges of student loans made pursuant to specific benefit programs. At times, the

system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.)

(1) to determine the eligibility of aid applicants and recipients for Federal student financial aid programs authorized by title IV of the HEA;

(2) to report changes in aid applicant and recipient enrollment status and enrollment in educational programs;

(3) to track aid recipients who owe title IV, HEA obligations (debtors);

(4) to maintain information on the status of student loans;

(5) to maintain information on awards to students under the Federal Pell Grant program (including approved Prison Education Programs (PEPs) (the FAFSA Simplification Act allows for expanding access to Federal Pell Grants to include Federal and State penal facilities' approved educational programs), the Academic Competitiveness Grant (ACG) program, the National Science and Mathematics Access to Retain Talent (National SMART) Grant program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant program, the Federal Supplemental Educational Opportunity Grant (FSEOG) program, the Iraq and Afghanistan Service Grant program, and money earned under the Federal Work Study (FWS) Program;

(6) to provide aid recipients and NSLDS users with loan refund and discharge details;

(7) to identify qualifying individuals and inform them about title IV, HEA benefits, including total and permanent disability (TPD) discharges, Public Service Loan Forgiveness (PSLF), and benefits under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. 3901–4043, to streamline the process for applying for loans and benefits, and to recoup payments or delinquent debts under the title IV, HEA programs;

(8) to provide consumer tools to the public to better evaluate the effectiveness of postsecondary institutions and programs, considering their costs, financial aid, loan repayment rates, completion rates, median debts, and the aggregate earnings of title IV, HEA aid recipients who were enrolled at postsecondary institutions and programs participating in the title IV, HEA programs, so that the public can make informed decisions about which postsecondary institutions and programs to attend;

(9) to enable the Department, or other Federal, State, Tribal, or local government agencies, to investigate, respond to, or resolve complaints concerning the practices or processes of the Department and/or the Department's contractors, or to investigate, respond to, or resolve aid recipients' requests for assistance or relief with regard to title IV, HEA program funds;

(10) to conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA; and

(11) to process income eligibility information and documentation for aid applicants and recipients, or applicable aid applicants' and recipients' parents or spouses, pertaining to the discharge of eligible loans under title IV, HEA programs.

The information in this system is also maintained for the following purposes relating to institutions of higher education (also referred to herein as ''educational institutions'' or ''postsecondary institutions'') participating in and administering the title IV, HEA programs:

(1) to permit Department staff, Department contractors, guaranty agencies, eligible lenders, and eligible institutions of higher education to verify the eligibility of a student, potential student, or parent for loans or Pell Grants or Pell Grant disbursements;

(2) to provide student aggregate loan calculations to educational institutions;

(3) to determine default rates for educational institutions, guaranty agencies, and lenders;

(4) to prepare electronic financial aid histories on aid applicants and recipients for educational institutions, guaranty agencies, Department staff, and Department contractors;

(5) to alert educational institutions of changes in students' financial aid eligibility via the Transfer Student Monitoring process;

(6) to assist Department staff, Department contractors and agents, guaranty agencies, the Department of Justice (DOJ), educational institutions, lenders, and servicers in collecting debts arising from the receipt of title IV, HEA funds;

(7) to assess title IV, HEA program activities by guaranty agencies, educational institutions, lenders, and servicers;

(8) to display organizational contact information provided by educational institutions, guaranty agencies, lenders, and servicers;

(9) to provide reporting capabilities for educational institutions, guaranty agencies, lenders, and servicers for use in title IV, HEA administrative functions and for the Department or other Federal, State, Tribal, or local agencies for use in oversight and compliance;

(10) to provide financial institutions and servicers, Department staff, and Department contractors with contact information on loan holders for use in the collection of loans;

(11) to provide educational institutions and servicers with information to resolve overpayments of Pell, ACG, National SMART, TEACH, Iraq and Afghanistan Service Grants, and FSEOG grants;

(12) to obtain data on and to report on students in an educational program for the purposes of monitoring program outcomes and compiling information related to Financial Value Transparency or Gainful Employment to be made available to educational institutions and to the general public;

(13) to provide consumer tools, such as the College Scorecard, that are designed to simplify information that prospective students receive about costs, financial aid, loan repayment rates, completion rates, median debts, and aggregate earnings of title IV, HEA aid recipients who were enrolled at postsecondary institutions and programs participating in the title IV, HEA programs so that prospective students can make informed decisions about which postsecondary institutions and programs to attend; and

(14) to provide data for educational institutions to ensure the accuracy of their educational programs' performance metrics.

The information maintained in this system is also maintained for the following purposes relating to the Department's oversight and administration of the title IV, HEA programs:

(1) to assist audit and program review planning;

(2) to support research, analysis, and development, and the implementation and evaluation of educational policies in relation to title IV, HEA programs;

(3) to conduct budget analysis and program review planning;

(4) to provide information that supports the Department's compliance with the Federal Credit Reform Act of 1990, as amended (CRA) (2 U.S.C. 661 *et seq.*);

(5) to ensure only authorized users access the NSLDS database and to maintain a history of the aid applicant and recipient information reviewed;

(6) to track the Department's interest in loans funded through the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) (P.L. 110–227);

(7) to track TEACH grants that have been converted to loans;

(8) to track eligibility for PSLF;

(9) to assist in the calculation of metrics related to Gainful Employment

and other title IV, HEA educational programs;

(10) to provide data for program oversight and strategic decision-making in the administration of higher education programs;

(11) to track eligibility for Direct Subsidized Loans and interest subsidy based upon the level of study, Classification of Instructional Programs (CIP) code, and published length of the educational program in which a student is enrolled;

(12) to evaluate the effectiveness of an institution's education programs, and help provide information to the public at the institutional and programmatic level on this effectiveness;

(13) to verify that Federal, State, local, and Tribal statutory, regulatory, and program requirements are met by educational and financial institutions, Federal Loan Servicers, the Federal Perkins Loan Servicer, and guaranty agencies;

(14) to help governmental entities at the Federal, State, Tribal, and local levels exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding an aid recipient's title IV, HEA program funds;

(15) to provide information to support web-based access to aid applicant's and recipient's title IV, HEA program data including enrollment;

(16) to track loan transfers from one holder or servicer to another;

(17) to provide title IV, HEA loan information to support the calculation of monthly payment amounts under Income-Driven Repayment (IDR) plans; and

(18) To support the investigation of possible fraud or abuse and to detect and prevent fraud or abuse.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individual title IV, HEA aid applicants and recipients.

This system also contains information on the parent(s) of a dependent aid applicant or recipient and the spouse of a married aid applicant or recipient.

In addition, this system contains records on aid recipients and endorsers who received or signed the promissory note for a loan(s) under one of the programs authorized under title IV of the HEA, including:

(1) the William D. Ford Direct Loan Program (Direct Loan), including Federal Direct Unsubsidized and Subsidized Stafford/Ford Loans, Federal Direct Consolidation Loans, and Federal Direct PLUS Loans;

(2) the Federal Family Education Loan (FFEL) Program,

(3) the Federal Insured Student Loan (FISL) Program,

(4) the Federal Perkins Loan Program (including National Defense Student Loans, National Direct Student Loans, and Perkins Expanded Lending and Income Contingent Loans) (Perkins Loans).

This system also contains records on aid recipients of Federal Pell Grants, ACG, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, the FWS Program, and FSEOGs, as well as on individuals who owe an overpayment on a Federal Pell Grant, an ACG, a TEACH Grant, a National SMART Grant, a FSEOG, an Iraq and Afghanistan Service Grant, or a Federal Perkins Loan.

Further, this system contains student enrollment information for individuals who have received title IV, HEA student assistance, as well as Master Conduit Loan Program Data, Master Loan Participation Program (LPP) Data, and loan-level detail on FFEL Subsidized, Unsubsidized, and Grad and Parent PLUS loans funded through those programs.

This system also contains records on students who are title IV, HEA aid recipients, and who attended, or who are attending, a gainful employment program at a postsecondary institution.

Lastly, this system contains records from 2014–2021 on the level of study, Classification of Instructional Programs (CIP) code, and published length of an educational program in which a student receiving title IV, HEA Federal student aid was enrolled to limit his or her eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student was enrolled, and to determine when an aid recipient who enrolled after reaching the 150 percent limit would have been responsible for the accruing interest on outstanding Direct Subsidized Loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: The Federal Tax Information (FTI) that the Department obtains directly from the Internal Revenue Service (IRS) under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act is maintained in a separate system of records entitled the ''FUTURE Act System (FAS)'' (18–11–23);

Records in the NSLDS include, but are not limited to:

(1) aid applicant and recipient identifier information, including SSN, name, date of birth, physical address, phone number, email address, and driver's license number and State of issuance;

(2) aid applicant demographic information, including an aid applicant's parent's and spouse's demographic information (if applicable), student enrollment, incarcerated student indicator flag, list of participating title IV, HEA institutions of higher education selected by the aid applicant to receive the Free Application for Federal Student Aid (FAFSA®) data along with residency plans, and the financial profile of an applicant and an aid applicant's parent(s) or spouse, as reported and calculated through the FAFSA form; and processing flags, indicators, rejections, and overrides;

(3) information on the aid recipient's loan(s) covering the period from the origination of the loan through final payment, consolidation, discharge, or other final disposition, including details such as loan amount, disbursements, balances, loan status, repayment plan payments and related information, collections, claims, deferments, forbearances, refunds, and discharges;

(4) information on an aid applicant's or recipient's endorser or co-signer of a PLUS loan application from the origination of the loan through final payment, consolidation, discharge, or other final disposition, including details such as co-signer SSN, name, date of birth, driver's license number and State of issuance (if reported), active-duty status (if applicable and reported), email address, address, phone number, and relevant loan information with respect to the loan on which they are the endorser or co-signer;

(5) for students who began an educational program, student identifiers including the student's SSN, date of birth, and name; student enrollment information including the Office of Postsecondary Education identification number (OPE ID number) of the institution, and the CIP code and credential level for the educational program in which the student enrolled; the student's enrollment status, annual cost of attendance (COA), total tuition and fees assessed, tuition residency status, total annual allowance for books, supplies, equipment, housing, and food from their COA, amount of institutional grants and scholarships disbursed, amount of other State, Tribal, or private

grants disbursed, and the amount of any private educational loans disbursed; and, if the student completed or withdrew from the program, the completion or withdrawal date, the total amount the student received from private education loans, the student's total amount of institutional debt, the student's total amount of tuition and fees assessed, the student's total amount of allowances for books, supplies, and equipment from the student's COA for each award year, and the total amount of institutional grants and scholarships disbursed to the student;

(6) aggregated income information on completers and non-completers of a particular educational program, and the median loan debt incurred by students enrolled in those education programs;

(7) student demographic information, such as dependency status, citizenship, veteran status, marital status, gender, income and asset information (including income and asset information on the student's spouse, if married), and expected family contribution or Student Aid Index (SAI);

(8) information on the parent(s) of a dependent aid applicant or aid recipient or the spouse of an independent aid applicant or aid recipient, including name, date of birth, SSN, marital status, email address, highest level of schooling completed and starting with award year 2024–2025, the parents' college attendance status, and income and asset information;

(9) information related to an aid applicant's or recipient's application for title IV, HEA benefits, including information relating to IDR or PSLF eligibility such as current income; family size; repayment plan selections; employer name; dates of employment; employment status; if the IDR aid applicant or aid recipient (or spouse, where applicable), provided consent/affirmative approval both to redisclose Federal Tax Information (FTI) of such individuals pursuant to clauses (iii), (iv), (v), and (vi) of section 6103(l)(13)(D) of the Internal Revenue Code (IRC) of 1986 and under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) of information to the IRS for the IRS to disclose FTI to the Department as part of a matching program to determine eligibility for, or repayment obligations under, IDR plans under title IV of the HEA with respect to loans under part D (Direct Loan program) of title IV of the HEA; repayment amount; and information about the aid recipient's spouse, if the aid applicant or recipient is married;

(10) Federal Pell Grant, FSEOG, ACG Grant, National SMART Grant, TEACH Grant, and Iraq and Afghanistan Service Grant amounts, dates of disbursement, and for Federal Pell Grants, approved PEPs (the FAFSA Simplification Act allows for expanding access to Federal Pell Grants to include Federal and State penal facilities' approved educational programs);

(11) Federal Pell Grant, ACG Grant, National SMART Grant, TEACH Grant, Iraq and Afghanistan Service Grant, FSEOG, Federal Perkins Loan Program overpayment amounts and/or earning amounts under the FWS Program;

(12) Information maintained by a guaranty agency, including demographic, contact, and identifier information, an aid applicant's FFEL loan(s), and the lender(s), holder(s), and servicer(s) of the borrower's FFEL loan(s);

(13) NSLDS user profiles that include name, SSN, date of birth, employer, and NSLDS username;

(14) information concerning the date of any default on loans and the aggregated loan data to support cohort default rate calculations for educational institutions, financial institutions, and guaranty agencies;

(15) pre- and post-screening results used to determine a student's or parent's aid eligibility;

(16) information on financial institutions participating in the loan participation and sale programs established by the Department under ECASLA, including the collection of: ECASLA loan-level funding amounts, dates of ECASLA participation for financial institutions, dates and amounts of loans sold to the Department under ECASLA, and the amount of loans funded by the Department's programs but repurchased by the lender;

(17) information on the student's educational institution, level of study, the CIP code, and published length for the program in which the student enrolled for an institution or programs of studies at the institution;

(18) information obtained pursuant to matching programs or other information exchanges with Federal and State agencies and other administrators of Federal funds and programs to assist in identifying individuals who may be eligible for aid applicant's or recipient's benefits related to their title IV, HEA loans or other title IV, HEA obligations, including TPD discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment or discharge benefits, or for the purpose of recouping payments or delinquent debts under title IV, HEA programs; and

(19) Information provided and generated through customer interactions with contact center support via inbound and outbound channels (phone, chat, web form, email, customer satisfaction survey, fax, physical mail, and digital engagement platforms). Information includes, but is not limited to: chat transcripts, email communications, audio recordings of customer calls, and screen recordings of contact center desktop support during customer interactions.

RECORD SOURCE CATEGORIES:

Information is obtained from other Federal, State, local, and Tribal agencies, other administrators of Federal funds and programs, guaranty agencies, educational institutions, financial institutions and servicers, aid applicants and recipients, parents and spouses of applicable aid applicants and recipients, and designated co-signers and endorsers.

Information is also obtained from other Department systems, or their successor systems, such as the Federal Loan Servicers (covered by the system of records entitled ''Common Services for Borrowers (CSB)''); Debt Management Collection System (covered by the system of records entitled ''Common Services for Borrowers (CSB)''); Common Origination and Disbursement System (covered by the system of records entitled ''Common Origination and Disbursement (COD) System''); Financial Management System (covered by the system of records entitled ''Financial Management System (FMS)''); Student Aid internet Gateway, Participant Management System (covered by the system of records entitled ''Student Aid internet Gateway (SAIG), Participation Management System''); Postsecondary Education Participants System (covered by the system of records entitled ''Postsecondary Education Participants System''); and all systems covered by the system of records entitled ''Aid Awareness and Application Processing.'' Information in this system also may be obtained from other persons or entities from which data is obtained under routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has

complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records to the specified users for the following program purposes:

(a) To verify the identity of the applicant involved, the accuracy of the record, or to assist with the determination of program eligibility and benefits, as well as institutional program eligibility, the Department may disclose records to the applicant, guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(b) To support default rate calculations and/or provide information on aid recipients' current loan status, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and State agencies;

(c) To monitor program outcomes and compile information related to Financial Value Transparency or Gainful Employment, the Department may disclose records to educational institutions;

(d) To provide financial aid history information to aid in their administration of title IV, HEA programs, the Department may disclose records to educational institutions, guaranty agencies, loan holders, or servicers;

(e) To support auditors and program reviewers in planning and carrying out their assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal, State, and local agencies;

(f) To support governmental researchers and policy analysts, the Department may disclose records to governmental organizations at the Federal, State, or local level, using safeguards for system integrity and provided that the recipient agrees to establish and maintain safeguards to protect the security and confidentiality of the disclosed records;

(g) To support Federal budget analysts in the development of budget needs and forecasts, the Department may disclose records to the Congressional Budget Office (CBO) and to Federal and State agencies;

(h) To assist in locating holders of loan(s), the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and Federal agencies;

(i) To assist analysts in assessing title IV, HEA program participation by guaranty agencies, educational institutions, and financial institutions and servicers, the Department may disclose records to Federal and State agencies;

(j) To assist loan holders in locating aid recipients, the Department may disclose records to guaranty agencies, educational institutions, financial institutions that hold an interest in the loan and their servicers, and to Federal agencies;

(k) To assist with meeting requirements under the CRA, the Department may disclose records to Federal agencies;

(l) To assist program administrators with tracking refunds and discharges of title IV, HEA loans, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(m) To enforce the terms of a loan, assist in the collection of a loan, or assist in the collection of an aid overpayment, the Department may disclose records to guaranty agencies, loan servicers, educational institutions, financial institutions, to the DOJ and private counsel retained by the DOJ, and to other Federal, State, local, or Tribal agencies;

(n) To assist the Department in tracking loans funded under ECASLA, the Department may disclose records to Federal agencies;

(o) To obtain data needed to assist the Department in evaluating the effectiveness of an institution's education programs and to provide the public with greater transparency about the level of economic return of an educational institution and their programs that receive title IV, HEA program assistance and to conduct testing that the Department has determined is necessary to obtain such data, the Department may disclose records to educational institutions and to Federal and State agencies, including the Social Security Administration and the U.S. Department of the Treasury; and

(p) To help Federal, State, Tribal, and local governmental entities exercise their supervisory and administrative powers (including licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of records relating to loans and grants made under title IV of the HEA, to permit these governmental entities to verify compliance with debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records.

(q) To support the investigation of possible fraud or abuse and to detect and prevent fraud or abuse in title IV, HEA program funds, disclosures may be made to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity where the DOJ agrees to or has been requested to provide or arrange for representation of the employee; or

(iv) Any Department employee in his or her individual capacity where the Department requests representation for or has agreed to represent the employee; or

(v) The United States, where the Department determines that the

litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget (OMB) if the Department seeks advice regarding whether records maintained in this system of records are required to be disclosed under the FOIA or the Privacy Act.

(5) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records to the contractor's employees, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(6) *Congressional Member Disclosure.* The Department may disclose records to a Member of Congress in response to an inquiry from the Member made at the written request of and on behalf of the individual whose records are being disclosed. The Member's right to the information is no greater than the right of the individual who requested it.

(7) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies or their Agents or Contractors, Professional Organizations, or the Department's Contractors.* The Department may disclose a record to a Federal, State, local, Tribal, or other public agency or an agent or contractor of such a public agency, a professional organization, or a Department contractor, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(8) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary proceeding involving a present or former employee of the Department, the Department may disclose a record from this system of records during the course of investigation, fact-finding, mediation, or adjudication to any party to the grievance, complaint, or action to the party's counsel or representative, to a witness, or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(9) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. 71 when relevant and necessary to their duties of exclusive representation.

(10) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Disclosure to the OMB or CBO for CRA Support.* The Department may disclose records to OMB or CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(12) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(13) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) 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.

(14) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid overdue claim of the Department: (1) the name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

In order for users to retrieve aid applicant or recipient information, they must supply the respective SSN, name, and date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are primarily retained and disposed of in accordance with ED Records Schedule 051: FSA National Student Loan Data System (NSLDS) (DAA–0441–2017–0004) (ED 051). The Department has submitted amendments to ED 051 for NARA's consideration and will not destroy records covered by ED 051 until such amendments are in effect, as applicable.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Authorized users: Access to the system is limited to authorized NSLDS program personnel and contractors responsible for administering the NSLDS program. Authorized personnel include Department employees and officials, financial and fiscal management personnel, computer personnel, and program managers who have responsibilities for implementing the NSLDS program. Read-only users: Read-only access is given to servicers, holders, financial/fiscal management personnel, and institutional personnel.

Physical safeguards: Magnetic tapes, disc packs, computer equipment, and other forms of data are maintained in areas where fire and life safety codes are strictly enforced. Security guards are staffed 24 hours a day, seven days a week, to perform random checks on the physical security of the record storage areas.

Procedural safeguards: A password is required to access the terminal, and a data set name controls the release of data to only authorized users. In addition, all sensitive data is encrypted using Oracle Transparent Data Encryption functionality. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act and Automatic Data Processing (ADP) security procedures. Contractors are required to maintain confidentiality safeguards with respect to these records. Contractors are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. All individuals who have access to these records receive appropriate ADP security clearances.

Department personnel make site visits to ADP facilities for the purpose of ensuring that ADP security procedures continue to be met. Privacy Act and ADP system security requirements are specifically included in contracts. The NSLDS project directors, project officers, and the system manager oversee compliance with these requirements.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security controls, a plan of action and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you must contact the system manager with the necessary particulars such as your name, date of birth, SSN, the name of the school or lender from which the loan or grant was obtained, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in the system of records, you must contact the system manager with the necessary particulars such as your name, date of birth, SSN, the name of the school or lender from which the loan or grant was obtained, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. You must also identify the specific item(s) to be changed, and provide a justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, you must contact the system manager with the necessary particulars such as your name, date of birth, SSN, the name of the school or lender from which the loan or grant was obtained, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Requests for notification about whether the system of records contains information about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The System of Records entitled the ''National Student Loan Data System (NSLDS)'' (18–11–06) was last modified and published in full on June 28, 2023 (88 FR 41934).

[FR Doc. 2024–11136 Filed 5–20–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

List of Correspondence From January 1, 2023, Through December 31, 2023

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The U.S. Department of Education (Department), Office of Special Education Programs (OSEP) is publishing the following list of correspondence from the Department during quarters one, two, three, and four of calendar year 2023. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement IDEA. These letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at *https://sites.ed.gov/idea/policy-guidance/*.

FOR FURTHER INFORMATION CONTACT: Daniel Schreier, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20024–

2500. Telephone:(202) 245–6352. Email: *daniel.schreier@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence for four quarters, January 1, 2023, through December 31, 2023. Under section 607(f) of IDEA, the Secretary is required to publish in the **Federal Register** a list of correspondence issued to individuals. In the interest of transparency, the following list includes not only those letters that are required to be published under section 607(f) of IDEA, but also includes guidance, letters, and other documents that contain interpretations of the requirements of IDEA and its implementing regulations, as well as information that the Department believes will assist the public in understanding the requirements of the law. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Guidance and Related Documents Issued by OSEP

Section 612 State Eligibility; Section 635 Requirements for a Statewide System; Section 637 State Application and Assurances

○ Dear Colleague Letter and guidance dated July 24, 2023, titled, Guidance on State General Supervision Responsibilities under Parts B and C of the IDEA, providing States with necessary information to exercise their general supervision responsibilities under IDEA and to ensure appropriate monitoring, technical assistance, and enforcement regarding local programs.

○ Dear Colleague Letter dated November 9, 2023 to State Directors of Special Education and State Part C Coordinators to provide resources to support parents and families of military-connected children with disabilities.

○ Guidance dated November 28, 2023, titled, 2023 Early Childhood Transition Questions and Answers, to assist State lead agencies, early intervention services programs and providers, State educational agencies, and local educational agencies in ensuring a seamless transition for children with disabilities who received early intervention services under IDEA Part C to eligibility for and receipt of preschool services under IDEA Part B.

○ Policy Statement dated November 28, 2023, titled, Inclusion of Children with Disabilities in Early Childhood Programs, issued jointly with the U.S. Department of Health and Human Services to make clear that all young children with disabilities should have access to inclusive high-quality early childhood programs, where they are provided with individualized and appropriate support in meeting high expectations.

OSEP Letters to Individuals

2023—First Quarter

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: State Educational Agency General Supervisory Authority

○ Letter dated March 2, 2023, to Callie Oettinger, regarding the use of the State complaint provisions under the IDEA to resolve individual and systemic complaints filed on behalf of a student who has graduated.

Part C—Early Intervention Program for Infants and Toddlers With Disabilities, Part B—Assistance for Education of All Children With Disabilities

Section 635—Requirements for Statewide System; Section 637 State Application and Assurances; Section 612 State Eligibility

Topic Addressed: Implementation of a Statewide System, and Early Childhood Transition Requirements

○ Letter dated March 17, 2023, to Jennifer Nix, addressing the responsibilities of the IDEA Part C lead agency, IDEA Part B State educational agency, and the local educational agencies when children with disabilities transition from receiving early intervention services under Part C of the IDEA to being eligible for and receiving preschool services under Part B of the IDEA, including early childhood transition requirements related to transition plans, transition notification, transition conferences, referral and late referrals, and reporting responsibilities.

2023—Second Quarter

No letters.

2023—Third Quarter

No letters.

2023—Fourth Quarter

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Children in Private Schools

○ Letter dated November 7, 2023, to Katie Jenner, addressing how to determine the location of virtual private schools for purposes of providing equitable services to eligible students enrolled in virtual private schools and, as applicable, their teachers and other educational personnel, under the Elementary and Secondary Education Act of 1965 (ESEA) and Part B of the IDEA.

○ Letter dated November 7, 2023, to Jill Underly, addressing how to determine the location of virtual private schools for purposes of providing equitable services to eligible students enrolled in virtual private schools and, as applicable, their teachers and other educational personnel, under the ESEA and Part B of the IDEA.

Accessible Format: On request to the person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain a copy of this notice and the letters or other documents described in this notice in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 2024–11102 Filed 5–20–24; 8:45 am]

BILLING CODE 4000–01–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:

Filings Instituting Proceedings

Docket Numbers: RP24–767–000.

Applicants: MountainWest Pipeline, LLC.

Description: § 4(d) Rate Filing: Operational Purchases and Sales of Gas to be effective 6/14/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5029.

Comment Date: 5 p.m. ET 5/28/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: May 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11047 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1999–000]

All Choice Energy NE LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of All Choice Energy NE LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 3, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

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Dated: May 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11052 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15045–002]

Current Hydro Project 19, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Licensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 15045–002.

c. *Date Filed:* May 8, 2024.

d. *Submitted By:* Current Hydro Project 19, LLC (Current Hydro).

e. *Name of Project:* New Cumberland Hydroelectric Project (New Cumberland Project).

f. *Location:* The New Cumberland Project would be located at the U.S.

Army Corps of Engineers' (Corps) New Cumberland Locks and Dam on the Ohio River in Hancock County, West Virginia. The project would occupy 2 acres of federal land administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Joel Herm, P.O. Box 224, Rhinebeck, NY 12572, (917) 244–3607, *joel@currenthydro.com* or Norm Bishop, P.O. Box 224, Rhinebeck, NY 12572, (303) 475–0608.

i. *FERC Contact:* Jay Summers at (202) 502–8764; or email at *jay.summers@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: July 7, 2024.[1]

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* 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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: New Cumberland Hydroelectric Project (P–15045–002).

m. The application is not ready for environmental analysis at this time.

n. The New Cumberland Project would use the Corps' existing New Cumberland Locks and Dam and would consist of the following new facilities: (1) a 101-foot-wide, 193-foot-long reinforced concrete powerhouse; (2) a 90-foot-wide by 350-foot-long intake section with trash racks; (3) two identical Kaplan pit turbine-generators with a combined capacity of 19.99 megawatts; (4) a 13.8-kilovolt (kV), 180-foot-long underground utilidor crossing under the Norfolk Southern railway and transitioning to a 350-foot overhead transmission to the powerhouse-substation; (5) a 90-foot-wide by 90-foot-long powerhouse-substation; (6) a 1,050-foot-long, 34.5-kV, three-phase overhead transmission line connecting the powerhouse-substation to the existing 35-kV transmission line, east of Hancock County Bus Garage interconnection point in West Virginia; and (7) appurtenant facilities.

o. Copies of the application 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 (P–2535). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll-free) or (202) 502–8659 (TTY).

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, contact FERC Online Support.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595, or *OPP@ferc.gov.*

q. Procedural schedule and final amendments: the application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	August 2024.
Request Additional Information (if necessary).	August 2024.
Issue Scoping Document 1 for comments.	November 2024.
Request Additional Information (if necessary).	January 2025.
Issue Scoping Document 2 (if necessary).	February 2025.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11049 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2). Because the 60-day filing deadline falls on a Sunday (*i.e.,* July 7, 2024), the filing deadline is extended until the close of business on Monday, July 8, 2024.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–178–000.
Applicants: Gransolar Texas One, LLC.
Description: Gransolar Texas One, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/15/24.
Accession Number: 20240515–5023.
Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: EG24–179–000.
Applicants: BT Jungmann, LLC.
Description: BT Jungmann, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/15/24.
Accession Number: 20240515–5025.
Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: EG24–180–000.
Applicants: Desert Quartzite, LLC.
Description: Desert Quartzite, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/15/24.
Accession Number: 20240515–5050.
Comment Date: 5 p.m. ET 6/5/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–1656–000; ER24–1657–000.

Applicants: McNair Creek Hydro Limited Partnership, Furry Creek Power Ltd.

Description: Second Supplement to 03/29/2024, Furry Creek Power Ltd., et al., tariff filing.

Filed Date: 5/10/24.

Accession Number: 20240510–5240.

Comment Date: 5 p.m. ET 5/31/24.

Docket Numbers: ER24–2014–000.

Applicants: Western Interconnect LLC.

Description: Tariff Amendment: Notice of Cancellation of OATT to be effective 5/16/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5024.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2015–000.

Applicants: New York Independent System Operator, Inc.

Description: 205(d) Rate Filing: NYISO 205: Market Revenue Offset for ICAP Demand Curves to be effective 7/15/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5027.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2016–000.

Applicants: MATL LLP.

Description: Compliance filing: Order 2023 Compliance Filing (RM22–14) to be effective 12/31/9998.

Filed Date: 5/15/24.

Accession Number: 20240515–5028.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2017–000.

Applicants: PacifiCorp.

Description: Compliance filing: Order Nos. 2023, 2023–A Compliance Filing to be effective 11/2/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5039.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2018–000.

Applicants: Louisville Gas and Electric Company.

Description: Compliance filing: FERC Order No. 2023 Compliance Filing to be effective 8/1/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5054.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2019–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–05–15_SA 4287 City of Columbia, MO-Boone Stephens Solar GIA (J1191) to be effective 5/6/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5064.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2020–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Initial Filing of Service Agreement FERC No. 112 to be effective 5/1/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5075.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2021–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4266 Beeline Solar Energy GIA to be effective 5/13/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5079.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2022–000.

Applicants: Black Hills Power, Inc.

Description: Compliance filing: Order 2023 Joint Open Access Transmission Tariff Revisions to be effective 8/1/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5090.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2023–000.

Applicants: Black Hills Colorado Electric, LLC.

Description: Compliance filing: Order 2023 Open Access Transmission Tariff Revisions to be effective 9/1/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5095.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2024–000.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Rate Schedule No. 261—Notice of Cancellation to be effective 7/15/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5101.

Comment Date: 5 p.m. ET 6/5/24.

Docket Numbers: ER24–2025–000.

Applicants: Wilderness Line Holdings, LLC.

Description: Compliance filing: Order No. 2023 Compliance Filing to be effective 5/15/2024.

Filed Date: 5/15/24.

Accession Number: 20240515–5113.

Comment Date: 5 p.m. ET 6/5/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–38–000.

Applicants: LS Power Grid California, LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of LS Power Grid California, LLC.

Filed Date: 5/14/24.

Accession Number: 20240514–5181.

Comment Date: 5 p.m. ET 6/4/24.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

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Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11155 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1904–078; Project No. 1855–050; Project No. 1892–030]

Great River Hydro, LLC; Notice of Reasonable Period of Time for Water Quality Certification Application

On April 23, 2024, Great River Hydro, LLC filed with the Federal Energy Regulatory Commission (Commission) documentation that it filed requests for Clean Water Act section 401(a)(1) water quality certifications with the New Hampshire Department of Environmental Services (New Hampshire DES) in conjunction with the above captioned projects. The documentation indicates that New

Hampshire DES received the requests for certifications on April 19, 2024. Pursuant to section 5.23(b) of the Commission's regulations,[1] we hereby notify New Hampshire DES of the following:

Date of Receipt of the Certification Requests: April 19, 2024.

Reasonable Period of Time to Act on the Certification Requests: One year, April 19, 2025.

If New Hampshire DES fails or refuses to act on the water quality certification requests on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11151 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 5.23(b).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR24–8–000]

Hess North Dakota Pipelines LLC; Notice of Request for Temporary Waiver

Take notice that on May 13, 2024, Hess North Dakota Pipelines LLC filed a petition seeking a temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Federal Energy Regulatory Commission's regulations (Commission), all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

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*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Comment Date: 5 p.m. eastern time on June 12, 2024.

Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11153 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15344–000]

Kram Hydro 4, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 15, 2024, Kram Hydro 4, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project proposed to be located at the U.S. Army Corps of Engineers' (Corps) Saylorville Locks and Dam near the City of Des Moines, Polk County, Iowa. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Saylorville Hydroelectric Project would consist of the following: (1) a proposed 90-foot-long, 30-foot-wide intake channel near the west bank of the existing Corps' dam; (2) a proposed 2,100-foot-long and 20-foot-diameter steel penstock extending from the intake to a proposed powerhouse; (3) a proposed 70-foot-long, 120-foot-wide reinforced concrete powerhouse, located downstream of the existing Corps' dam, containing two Kaplan pit turbine-generators with a total capacity of 10.0 megawatts; (4) an existing tailrace channel used to convey flows back to the Des Moines River downstream of the Corps dam's discharge channel; (5) a proposed 13.8 kilovolt-ampere substation located adjacent to the proposed powerhouse; and (6) a proposed 13.8 kilovolt, 7,000-foot-long 3-phase overhead transmission line connecting the substation to the grid. The proposed project would have an estimated annual generation of 52,000 megawatt-hours.

Applicant Contact: Pamela Niditch, Kram Hydro 4 LLC, 12333 Sowden Rd., Ste. B, PMB 50808, Houston, Texas 77080–2059; phone: (570) 560–0205.

FERC Contact: Shivani Khetani; phone: (212) 273–5917, or by email at *shivani.khetani@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60

days from the issuance of this notice.[1] Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15334–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15334) in the docket number field to access the document. For assistance, contact FERC Online Support.

[1] The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2). Because the 60-day filing deadline falls on a Sunday (*i.e.,* July 14, 2024), the filing deadline is extended until the close of business on Monday, July 15, 2024.

Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11148 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–260]

Pacific Gas & Electric Company; Notice of Application for Temporary Flow Modification Accepted for Filing, 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. *Application Type:* Request for a temporary minimum instream flow variance of Article 39.

b. *Project No:* 2310–260.

c. *Date Filed:* April 12, 2024.

d. *Applicant:* Pacific Gas & Electric Company.

e. *Name of Project:* Drum-Spaulding Hydroelectric Project.

f. *Location:* The project is located on the upper reaches of the South Yuba and Bear Rivers in Nevada and Placer Counties, California, near the cities of Auburn, Colfax, Grass Valley and Nevada City. The project occupies Federal lands within the Tahoe National Forest managed by the U.S. Department of Agriculture Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Trevor Moore, P.O. Box 28209, Oakland, California 94604, *TQMI@pge.com,* (530) 205–7345.

i. *FERC Contact:* Katherine Schmidt, *katherine.schmidt@ferc.gov,* (415) 369–3348.

j. *Cooperating agencies:* With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* June 17, 2024.

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.* 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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2310–260. 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.

l. *Description of Request:* The purpose of the project is to restore the Lower Feeley Lake Dam (Carr Lake) Crest to its original design elevation and associated upstream toe along with enhanced protection to the upstream slope. A variance in the minimum flows required by Article 39 is necessary to facilitate the work. Approving the variance would allow the licensee to reduce flows released from the Lower Feeley Dam from the required flow of 0.5 cubic-feet-per-second (cfs) target to a 0.4 cfs target and reduce the allowable minimum flow from 0.2 cfs to 0.1 cfs. The described reduction in flows would be permitted from the onset of variance approval by the Commission, if approved, until November 30, 2024.

m. *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.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *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.

p. *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.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11150 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: May 23, 2024, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Agenda

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Debbie-Anne A. Reese, Acting Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1114TH—MEETING

[Open meeting—May 23, 2024, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD24–1–000	Agency Administrative Matters.
A–2	AD24–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Market Update.
	Electric	
E–1	RD24–3–000	North American Electric Reliability Corporation.
E–2	RD23–1–002	North American Electric Reliability Corporation.
E–3	ER18–1639–028	Constellation Mystic Power, LLC.
E–4	ER23–1335–001, ER23–1335–002	Ameren Illinois Company.
E–5	EL24–64–000	*Lackawanna Energy Center LLC* v. *PJM Interconnection, L.L.C.*
E–6	ER24–219–001	Pacific Gas and Electric Company.
E–7	ER22–983–006	ISO New England Inc.
E–8	ER21–2818–002, EL22–4–002 (consolidated)	Tri-State Generation and Transmission Association, Inc.
	EL21–75–001	Wheat Belt Public Power District and La Plata Electric Association, Inc.
	EL21–53–001 (unconsolidated)	Northwest Rural Public Power District, San Isabel Electric Association, Inc., San Miguel Power Association, Springer Electric Cooperative, Inc., and *United Power, Inc.* v. *Tri-State Generation and Transmission Association, Inc.*
E–9	ER24–1221–000	Southwest Power Pool, Inc.
E–10	ES23–71–000	ALLETE, Inc.
E–11	EL24–95–000	ALLCO FINANCE LIMITED.
	QF16–365–004	Clinton Solar LLC.
	QF16–366–003, QF16–369–004, QF16–379–004, QF16–381–003, QF16–382–003, QF21–661–001.	Windham Solar LLC.

1114TH—MEETING—Continued

[Open meeting—May 23, 2024, 10:00 a.m.]

Item No.	Docket No.	Company
	QF24–367–001	Clear Lake Solar LLC.
	QF24–368–001	Maple Road Solar LLC.
E–12	ER24–1572–000, EL19–38–002, EL19–38–000	*Pacific Gas and Electric Company City and County of San Francisco* v. *Pacific Gas and Electric Company.*
	Gas	
G–1	OR19–22–002, OR19–32–002 (consolidated)	West Texas Gulf Pipe Line Company LLC Permian Express Partners LLC.
	Hydro	
H–1	RM24–5–000	Establishment of Categorical Reasonable Period of Time for Action on Requests for Water Quality Certification under Section 401(a)(1) of the Clean Water Act and Clarifying Types of Hydroelectric Project Proceedings That May Require Water Quality Certification.
H–2	P–2266–129	Nevada Irrigation District.
	Certificates	
C–1	CP23–519–000	Rio Bravo Pipeline Company, LLC.
C–2	CP15–521–001	Gulf LNG Liquefaction Company, LLC and Gulf LNG Energy, LLC.
C–3	CP24–70–000	Rio Grande LNG, LLC, Rio Grande LNG Train 4, LLC, and Rio Grande LNG Train 5, LLC.
C–4	CP23–513–000	Port Arthur Pipeline, LLC.
C–5	CP16–22–007	NEXUS Gas Transmission, LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: May 16, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11244 Filed 5–17–24; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–10073–000]

Logan, Cary J. Jr.; Notice of Filing

Take notice that on May 13, 2024, Cary J. Logan Jr. submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and section 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 45.8.

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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225

Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. eastern time on June 4, 2024.

Dated: May 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11051 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9647–003]

Vecino Vineyards, Inc.; Notice of Proposed Termination of Exemption by Implied Surrender and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric proceeding has been initiated by the Commission and is available for public inspection:

a. *Type of Proceeding:* Proposed Termination of Exemption by Implied Surrender.

b. *Project No:* 9647–003.

c. *Date Initiated:* April 23, 2024.

d. *Applicant:* Vecino Vineyards, Inc.

e. *Name of Project:* Hammeken's Power House Canal.

f. *Location:* The project is located on the East Fork Russian River, Mendocino County, California. The project does not include Federal lands.

g. *Filed Pursuant to:* 18 CFR 4.106.

h. *Applicant Contact:* Michael Miller, 14100 Powerhouse Road, Potter Valley, CA, 95469, (707) 743–1830.

i. *FERC Contact:* David Rudisail, (202) 502–6376, *david.rudisail@ferc.gov*.

j. *Resource Agency Comments:* Federal, State, local and Tribal agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

k. *Deadline for filing comments, motions to intervene, and protests:* July 1, 2024.

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*. 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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–9647–003. 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.

l. *Description of Project Facilities:* The run-of-river project utilized the flows released into the East Fork Russian River by Pacific Gas and Electric Company's Potter Valley Project No. 77. The project works include: a concrete anti-vortex shield; two 4-foot-diameter 12-foot-long steel penstocks; a powerhouse containing two turbine-generator units with a combined capacity of 300 kW operating under a head of 15.5 feet; and a 12.4 kV transmission line interconnecting the project with an existing PG&E substation. The project has been not operated since 2013.

m. *Description of Proceeding:* The exemptee is in violation of Standard Article 1 of its exemption, which was granted on August 26, 1986 (36 FERC 62,223). The Commission's regulation 18 CFR 4.106 provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. The project has not operated since 2013.

In July 2022, and April, August, and September of 2023, the Commission sent the exemptee letters providing details for filing a surrender application and requiring the exemptee to file information regarding their intentions to surrender the exemption or restore operation of the project. The exemptee has not responded to any of the Commission's correspondence, nor have they filed a surrender application.

n. Location of the Order Issuing Exemption may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–9647) 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.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. *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.

q. *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.

r. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov*.

Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11149 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus point two one percent (PPI–FG − 0.21%). The Commission determined in the January 2022 Order [1] that PPI–FG − 0.21% is the appropriate oil pricing index factor for pipelines to use for this period.

The regulations provide that the Commission will publish annually an index figure reflecting the final change in the PPI–FG after the Bureau of Labor Statistics publishes the final PPI–FG in May of each calendar year. The annual average PPI–FG index figures were 250.9 for 2022 and 254.6 for 2023.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2022 to 2023, minus 0.21 percent, is positive 0.012647.[3] Oil pipelines must multiply their July 1, 2023, through June 30, 2024, index ceiling levels [4] by positive 1.012647 [5] to compute their index ceiling levels for July 1, 2024, through June 30, 2025, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12-month period beginning January 1, 1995,[6] *see Explorer Pipeline Company,* 71 FERC ¶ 61,416, at n.6 (1995).

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*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11147 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

[1] *Five-Year Rev. of the Oil Pipeline Index,* 178 FERC ¶ 61,023, at P 105 (January 2022 Order), *reh'g denied,* 179 FERC ¶ 61,100 (2022).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at 202–691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the internet at *http://www.bls.gov.* To obtain the BLS data, scroll down to ''Data Tools'' and click on ''BLS Popular Series.'' At the next screen, under the heading ''Price Indexes,'' select the box, ''PPI Finished Goods 1982=100 (Unadjusted) – WPUFD49207,'' then scroll to the bottom of this screen and click on Retrieve data.

[3] [254.6–250.9]/250.9 = 0.014747 − 0.0021 = 0.012647.

[4] *See* January 2022 Order, 178 FERC ¶ 61,023, *reh'g denied,* 179 FERC ¶ 61,100; *see also Revisions to Oil Pipeline Reguls. Pursuant to the Energy Pol'y Act of 1992,* 178 FERC ¶ 61,046 (2022).

[5] 1 + 0.012647 = 1.012647.

[6] For a listing of all prior multipliers issued by the Commission, see the Commission's website, *https://www.ferc.gov/industries-data/oil/general-information/oil-pipeline-index.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–177–000.
Applicants: Hornet Solar LLC.
Description: Hornet Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/13/24.
Accession Number: 20240513–5293.
Comment Date: 5 p.m. ET 6/3/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–1259–001.
Applicants: Occidental Power Marketing, L.P.
Description: Tariff Amendment: Deficiency Letter Response to be effective 2/16/2024.
Filed Date: 5/14/24.
Accession Number: 20240514–5044.
Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1261–001.
Applicants: Occidental Power Services, Inc.
Description: Tariff Amendment: Deficiency Letter Response to be effective 2/16/2024.
Filed Date: 5/14/24.
Accession Number: 20240514–5045.
Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1262–001.
Applicants: Occidental Chemical Corporation.
Description: Tariff Amendment: Deficiency Letter Response to be effective 2/16/2024.
Filed Date: 5/14/24.
Accession Number: 20240514–5046.
Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1263–001.
Applicants: OTCF, LLC.
Description: Tariff Amendment: Deficiency Letter Response to be effective 2/16/2024.
Filed Date: 5/14/24.
Accession Number: 20240514–5052.
Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1469–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to ER24–1469–001 re: Metadata Correction to be effective 1/1/2024.
Filed Date: 5/14/24.
Accession Number: 20240514–5114.
Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1580–001.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Double Run Solar LGIA Amended Amendment Filing to be effective 3/6/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5094.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1700–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): EDF Renewables (Rock House Solar) LGIA Amended Amendment Filing to be effective 3/22/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5095.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1755–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Shelby Solar Park LGIA Amended Amendment Filing to be effective 4/2/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5093.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–1756–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Sawmill Junction Solar Park A&R LGIA Amended Amendment Filing to be effective 4/4/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5092.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2002–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Modify Adder for Offers Greater Than $1000/MWh to be effective 7/14/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5026.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2003–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Allow Nomination of Candidate LTCRs for FSEs and GFA Carve Outs to be effective 7/14/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5027.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2005–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Saragosa Del Sol Energy Generation Interconnection Agreement to be effective 4/23/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5056.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2006–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX–BRP Blue Topaz 2 Generation Interconnection Agreement to be effective 4/22/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5063.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2007–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Rev to Section II of ISO Tariff Related to Comp. with Order 2023 and 2023–A to be effective 12/31/9998.

Filed Date: 5/14/24.

Accession Number: 20240514–5109.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2008–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–05–14_SA 4288 Ameren IL-Panther Solar B912 GIA (J1306) to be effective 7/14/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5152.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2009–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: Revisions in Compliance with Order Nos. 2023 and 2023–A to be effective 8/12/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5156.

Comment Date: 5 p.m. ET 6/4/24.

Docket Numbers: ER24–2010–000.

Applicants: AMP Transmission, LLC, AES US Services, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AMP Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: AES Ohio submits Interconnection Agreement, SA No. 7241 to be effective 5/7/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5158.

Comment Date: 5 p.m. ET 6/4/24.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: May 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11048 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–015]

Increasing Market and Planning Efficiency Through Improved Software; Supplemental Notice of Technical Conference on Increasing Real-Time and Day-Ahead Market and Planning Efficiency Through Improved Software

As first announced in the Notice of Technical Conference issued in this proceeding on February 29, 2024, Commission staff will convene a technical conference on July 9, 10, and 11, 2024 to discuss opportunities for increasing real-time and day-ahead market and planning efficiency of the bulk power system through improved software. Attached to this Supplemental Notice is the agenda for the technical

conference and speakers' summaries of their presentations.

While the intent of the technical conference is not to focus on any specific matters before the Commission, some conference discussions might include topics at issue in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

PJM Interconnection, L.L.C. Docket No. ER24–99–000
Southwest Power Pool, Inc. Docket No. ER24–1317–000
Southwest Power Pool, Inc. Docket No. ER24–1658–000
Southwest Power Pool, Inc. Docket No. ER22–1697–000
Midcontinent Independent System Operator, Inc. Docket No. ER22–1640–000
ISO New England Inc. Docket No. ER22–983–000
PJM Interconnection, L.L.C. Docket No. ER22–962–000
California Independent System Operator Corp. Docket No. ER21–2455–000
New York Independent System Operator, Inc. Docket No. ER21–2460–000
Midcontinent Independent System Operator, Inc. Docket No. ER24–1638–000

The conference will allow presenters and attendees to participate either in-person or virtually. Further details on both in-person and virtual participation will be available on the conference web page.[1]

Attendees are requested to register through the Commission's website on or before June 3, 2024. Registration will help ensure that Commission staff can provide sufficient physical and virtual facilities and to communicate with attendees in the case of unanticipated emergencies or other changes to the conference schedule or location. Access to the conference (virtual or in-person) may not be available to those who do not register by June 3.

Slides are due from selected speakers by 5:00 p.m. EDT on July 1, 2024. Before 1:00 p.m. EDT on July 8, 2024, Commission staff will work with presenters to provide quality assurance that their presentation materials are prepared, formatted correctly, and ready for delivery during the conference. All updates to slides submitted before 1:00 p.m. on July 8, 2024 will be posted to the Commission website in advance of the conference. Any updated slides submitted after 1:00 p.m. on July 8, 2024 will be posted to the Commission website after the conference; however, the live conference may use slides versions submitted by 1 p.m. on July 8, 2024.

The Commission will accept comments following the conference, with a deadline of August 12, 2024.

There is an ''eSubscription'' link on the Commission's website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, *Sarah.McKinley@ferc.gov*
Alexander Smith (Technical Information), Office of Energy Policy and Innovation, *Alexander.Smith@ferc.gov*
Monica Ferrera (Technical Information), Office of Energy Policy and Innovation, *Monica.Ferrera@ferc.gov*

Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11156 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

[1] *https://www.ferc.gov/news-events/events/increasing-real-time-and-day-ahead-market-and-planning-efficiency-through-1.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2327–047]

Great Lakes Hydro America, LLC; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Cascade Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Draft Environmental Assessment (DEA) for the project. No federal land is occupied by project works or located within the project boundary.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the DEA 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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting 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–2327–047.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: May 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11050 Filed 5–20–24; 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:

Filings Instituting Proceedings

Docket Numbers: RP24–768–000.

Applicants: Adelphia Gateway, LLC.

Description: 4(d) Rate Filing: Adelphia Revised Tariff Filing to be effective 5/15/2024.

Filed Date: 5/14/24.

Accession Number: 20240514–5193.

Comment Date: 5 pm ET 5/28/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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.

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Dated: May 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–11154 Filed 5–20–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0159; FRL–11684–03–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings for March 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from March 1, 2024, to March 31, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0159, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1667 email address: *edelstein.rebecca@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

C. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- P–23–0128, Fatty acids, C16–18, reaction products with diethanolamine; CASRN: 91032–08–5.
- J–24–0001–0002, Chromosomally modified *Saccharomyces cerevisiae* (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 15, 2024.

Shari Z. Barash,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024–11087 Filed 5–20–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0057; FRL–11683–04–OCSPP]

Certain New Chemicals; Receipt and Status Information for April 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 4/01/2024 to 4/30/2024.

DATES: Comments identified by the specific case number provided in this document must be received on or before June 20, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0057, through the *Federal eRulemaking Portal* at *https://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. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 4/01/2024 to 4/30/2024. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including

amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through regulations.gov 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending, or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 4/01/2024 TO 4/30/2024

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–24–0014	1	04/09/2024	CBI	(G) Biopolymer production	(G) Biopolymer producing modified microorganism, with chromosomally located modifications.
J–24–0015	1	04/09/2024	CBI	(G) Biopolymer production	(G) Biopolymer producing modified microorganism, with chromosomally located modifications.
J–24–0016	1	04/11/2024	CBI	(G) Chemical production	(G) Chromosomally modified Saccharomyces cerevisiae.
J–24–0017	1	04/11/2024	CBI	(G) Chemical production	(G) Chromosomally modified Saccharomyces cerevisiae.
J–24–0018	1	04/11/2024	CBI	(G) Chemical production	(G) Chromosomally modified Saccharomyces cerevisiae.
J–24–0019	1	04/11/2024	CBI	(G) Chemical production	(G) Chromosomally modified Saccharomyces cerevisiae.
P–21–0059A	3	04/14/2024	CBI	(G) Stabilizer	(S) Methanesulfonic acid,1,1,1-trifluoro-, ytterbium(3+) salt (3:1).
P–22–0059A	3	04/24/2024	AB Enzymes, Inc	(S) Use of enzyme in laundry and dishwashing detergents.	(S) Thermomycolin, fermented, from a modified Trichoderma reesei.
P–22–0157A	7	04/19/2024	Evonik Corporation	(S) Polyurethane catalyst	(S) 1,2-Ethanediamine, N1,N2-dimethyl-N1-(1-methylethyl)-N2-[2-[methyl(1-methylethyl)amino]ethyl]-.
P–22–0157A	8	04/26/2024	Evonik Corporation	(S) Polyurethane catalyst	(S) 1,2-Ethanediamine, N1,N2-dimethyl-N1-(1-methylethyl)-N2-[2-[methyl(1-methylethyl)amino]ethyl]-.
P–23–0022A	4	04/03/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Multi-walled carbon nanotubes.
P–23–0023A	4	04/03/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Multi-walled carbon nanotubes.

TABLE I—PMN/SNUN/MCANs APPROVED* FROM 4/01/2024 TO 4/30/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–23–0024A	4	04/03/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Multi-walled carbon nanotubes.
P–23–0123A	2	04/29/2024	CBI	(G) A polymer of insulating materials.	(G) Phenol, Polyalkylcarbomonocycle bis-, polymer with 2-carbomonocyclichaloheteromonocycle, bis[(alkenylcarbomonocyclic)alkyl] ether.
P–23–0174A	6	04/05/2024	CBI	(G) Component used in battery manufacturing.	(G) Mixed metal oxide.
P–23–0174A	7	04/10/2024	CBI	(G) Component used in battery manufacturing.	(G) Mixed metal oxide.
P–23–0174A	8	04/23/2024	CBI	(G) Component used in battery manufacturing.	(G) Mixed metal oxide.
P–23–0174A	9	04/24/2024	CBI	(G) Component used in battery manufacturing.	(G) Mixed metal oxide.
P–23–0181A	2	04/09/2024	CBI	(G) Used as adhesive	(G) Alkanedioic acid, polymer with mixed alkanediol, polyalkyl glycol, carbomonocycle carbomonocycle, alkane carbopolycycle diisocyanate.
P–24–0082A	3	04/10/2024	CBI	(G) Additive used in 3D printing ink formulations.	(S) 2-Propenoic acid, 3-bromo-2,2-bis(bromomethyl)propyl ester.
P–24–0100A	2	04/04/2024	CBI	(G) Wetting agent	(G) sulfonyl carbamate of propoxylated alkyl alcohol.
P–24–0101A	2	04/04/2024	CBI	(G) Wetting agent	(G) sulfonyl carbamate of ethoxy/propoxylated alkyl alcohol ethoxy.
P–24–0104	1	04/02/2024	CBI	(G) Plastic additive	(G) carbomonocycle alkylamide, 3,5-bis(1,1-dialkyl)-N-[3-alkylene-2,5-dioxo-1-heteromonocyclic]-4-hydroxy-.
P–24–0105	1	04/04/2024	CBI	(G) Raw material of polyurethane.	(G) Carbonic acid diaryl ester with alkanediol.
P–24–0106	1	04/08/2024	CBI	(S) Plasticizer/stabilizer for flexible polyvinyl chloride (PVC), polylactic acid (PLA), and nitrile butadiene rubber (NBR).	(G) Glycerides, alkyl, epoxidized, alkyl esters.
P–24–0107	1	04/08/2024	CBI	(S) Plasticizer/stabilizer for flexible polyvinyl chloride (PVC), polylactic acid (PLA), and nitrile butadiene rubber (NBR).	(G) Glycerides, alkyl, epoxidized, alkyl esters.
P–24–0108	1	04/09/2024	Wacker Chemical Corporation.	(S) React and in polymerization reactions to produce low concern polymers.	(S) 2,5-Furandione, dihydro-3-(2-propenyl)-.
P–24–0109	1	04/09/2024	CBI	(G) Electrolyte salt	(G) Lithium dihalo (oxalato)borate(1-).
P–24–0109A	2	04/18/2024	CBI	(G) Electrolyte salt	(G) Lithium dihalo (oxalato)borate(1-).
P–24–0110	1	04/11/2024	US Paint Corp.	(G) Component of coating	(G) Alkyl fatty acids, polymers with substituted heteropolycyclic, substituted carbomonocycle, carbomonocyclic dicarboxylic acid and trisubstituted alkyl, substituted alkyl alkenoate-blocked, polymers with substituted alkene, substituted bis alkylalkanenitrile-initiated heteromonocyclic alkenoate-substituted alkanoic acid-alkyl alkenoate polymer alkenoate, heteromonocyclic alkenoate, substituted alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, alkenoic acid and substituted carbomonocycle, alkyl substituted alkyl alkanoate initiated,- and substituted bis alkylalkanenitrile-initiated.
P–24–0111	2	04/30/2024	CBI	(S) Hardener for use in paints, coatings, and adhesives.	(G) Formaldehyde, polymer with aminoalkyl-(aminoalkyl)amino(alkyl)-alkaneamine, alkanediylbis(oxyalkylene)(oxirane), 4,4′-(1-methylethylidene)bis[phenol] and 2,2′-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane], modified with (aminoalkyl)amino(alkyl)amino-phenoxy-alkanol and alkyl modified-ether, salts.
P–24–0112	2	04/18/2024	Swan Chemical, Inc	(S) Rubber accelerator for the manufacture of rubber articles.	(S) 2,2′-dithio di(ethylammonium)-bis(dibenzyldithiocarbamate).
P–24–0112A	3	04/26/2024	CBI	(S) Rubber accelerator for the manufacture of rubber articles.	(S) Carbamodithioic acid, N,N,-bis(phenylmethyl)-, compd. with 2,2′-dithiobis[ethanamine](2:1).
P–24–0113	1	04/12/2024	CBI	(S) Adhesion and curing agent for use in paints and adhesives.	(G) Epoxidized D-glucitol.

TABLE I—PMN/SNUN/MCANs APPROVED* FROM 4/01/2024 TO 4/30/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–24–0115	1	04/12/2024	PCI Synthesis	(S) Additive (e.g., solvent, cleaning agent, coalescent) used in spray-applied products (e.g., paints, coatings, inks, toner); Additive (e.g., paints, coatings, solvent, cleaning agent, coalescent) used in non-spray applied products (e.g., adhesives, sealants, thinners, paint removers, anti-freeze and de-icing products, fillers, putties, plasters, clays, tabletting, compression, extrusion, pelletization, granulation, surface treatment, leather treatment, lubricants, greases, waxes, polishes, release products, degreasers).	(S) Pentanedioic acid, 1,5-dibutyl ester.
P–24–0122	1	04/12/2024	CBI	(G) Intermediate for Electronic Industry.	(G) Sulfonium, polyphenyl(substituted phenyl) alkylbenzenesulfonate.
P–24–0124	1	04/16/2024	US Paint Corp	(G) Component of coating	(G) Alkyl alkenoic acid, alkyl ester, polymer with substituted carbomonocycle, substituted alkyl alkyl alkenoate phosphate, substituted alkyl alkyl alkenoate, alkyl alkenoate, heteromonocycle polymer, substitutes alkenyl substituted alkyl ester, alkyl substituted alkyl alkanoate initiated.
P–24–0124A	2	04/23/2024	US Paint Corp	(G) Component of coating	(G) Alkyl alkenoic acid, alkyl ester, polymer with substituted carbomonocycle, substituted alkyl alkyl alkenoate phosphate, substituted alkyl alkyl alkenoate, alkyl alkenoate, heteromonocycle polymer, substitutes alkenyl substituted alkyl ester, alkyl substituted alkyl alkanoate initiated.
P–24–0124A	3	04/23/2024	US Paint Corp	(G) Component of coating	(G) Alkyl alkenoic acid, alkyl ester, polymer with substituted carbomonocycle, substituted alkyl alkyl alkenoate phosphate, substituted alkyl alkyl alkenoate, alkyl alkenoate, heteromonocycle polymer, substitutes alkenyl substituted alkyl ester, alkyl substituted alkyl alkanoate initiated.
P–24–0126	2	04/25/2024	CBI	(G) component in resin	(G) Poly(oxyalkanediyl), alpha-hydro-omega-hydroxy-, polymer with disubstituted carbomonocycle, glycerol 1,3-disubstituted-blocked.
P–24–0129	1	04/18/2024	CBI	(G) Monomer	(G) Alkanoic acid, mercapto-, ((((mercapto-oxoalkoxy)-(mercapto-oxoalkoxy)alkyl)alkoxy)alkyl)-((mercapto-oxoalkoxy)alkyl)-alkanediyl] ester.
P–24–0130	1	04/18/2024	CBI	(S) Sulfur Scavenger	(G) poly(alkoxy)alkanol.
P–24–0131	1	04/18/2024	Cargill, Incorporated	(S) Use as a lubricant in electric vehicle transmission fluid and in engine oil.	(G) Alkanoic acid, 2-alkylalkyl ester.
P–24–0132	1	04/18/2024	CBI	(G) Sizing agent	(S) Sunflower oil, oleic acid-high, maleated.
P–24–0134	2	04/29/2024	Chevron Phillips Chemical Company, LP.	(G) Chemical intermediate	(G) Metal oxalate.
P–24–0135	2	04/25/2024	ArrMaz Products, Inc	(S) Anti-caking additive	(S) Phosphoric acid, mono- and di-C16–18-alkyl esters.
P–24–0138	1	04/19/2024	CBI	(G) UV-absorber	(G) Phenol, dialkylalkyl[(alkyl heteroacyl)heteropolycyclic]alkyl-.
P–24–0146	1	04/20/2024	CBI	(G) Display Materials	(G) Benzene,[alkyl [polycycloalkyl]-yl] polyfluoroalkyl-.
SN–24–0005	1	04/17/2024	CBI	(G) Paint	(G) Dicarboxylic acids, polymers with alkanoic acid, alkanediol, susbtituted-alkylalkanoic acid, substituted alkyl carbomonocyle, alkanedioic acid and alkanediol, alkanolamine blocked, compds with alkanolamine.
SN–24–0006	1	04/17/2024	CBI	(G) Paint	(G) Dicarboxylic acids, polymers with alkanoic acid, alkanediol, susbtituted-alkylalkanoic acid, substituted alkyl carbomonocyle, alkanedioic acid and alkanediol, alkanolamine blocked, compds with alkanolamine.

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90-day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not subject to a CBI claim) on the TMEs and/or Biotech Exemptions received by EPA during this period: The EPA case number assigned to the TME and/or Biotech Exemption, the submission document type (initial or amended), the version number, the date the TME and/or Biotech Exemption was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the TME and/or Biotech Exemption, and the chemical substance identity.

TABLE II—TMEs AND BIOTECH EXEMPTIONS RECEIVED FROM 4/1/2024 TO 4/30/2024

Case No.	Submission type	Version	Received date	Manufacturer	Use	Chemical substance
T–24–0001	Test Marketing Exemption Application (TMEA).	2	04/15/2024	Zschimmer & Schwarz	(S) Raw material in ester manufacturing, to be fully consumed	(G) Isomerized alkane derivs.
T–24–0001A	Test Marketing Exemption Application (TMEA).	3	04/18/2024	Zschimmer & Schwarz	(S) Raw material in ester manufacturing, to be fully consumed	(G) Isomerized alkane derivs.

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE III—NOCs APPROVED* FROM 4/1/2024 TO 4/30/2024

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–19–0054A	04/23/2024	06/22/2021	This NOC is amended to cover 1 of the 2 substances produced. A separate NOC document will be submitted for the second of the 2 substances produced.	(G) Polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts.
P–19–0095	04/24/2024	03/26/2024	N	(G) Poly hydroxy alkanoate.
P–19–0179	04/29/2024	04/29/2024	N	(S) Benzoic acid, 4-chloro-2-methyl-.
P–19–0183	04/29/2024	04/29/2024	N	(S) Benzoic acid, 4-chloro-2-methyl-, sodium salt (1:1).
P–20–0147	04/01/2024	03/27/2024	N	(G) Substituted-2h-thiopyrylium, salt with fluoroalkyl tricycloalkane-carboxylate (1:1).
P–21–0151	04/15/2024	04/15/2024	N	(G) Soybean oil, epoxidized, polymer with bisphenol a, alkyl glycidyl ether, epichlorohydrin, polyethylene glycol and trihydroxyalkane.
P–21–0164	04/03/2024	03/19/2024	N	(S) From EPA approval notice: equilibrium product of trimethoxymethylsilane and 2-butanone, oxime from cas letter prior to pmn approval: 2-butanone, oxime, reaction products with trimethoxymethylsilane.
P–22–0055	04/04/2024	04/03/2024	N	(G) Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt.

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In table IV of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE IV—TEST INFORMATION RECEIVED FROM 4/1/2024 TO 4/30/2024

Case No.	Received date	Type of test information	Chemical substance
P–14–0712	03/29/2024	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing	(S) Waste plastics, pyrolyzed, C5–55 fraction.
P–22–0126	04/26/2024	Particle Size, Fiber Length, and Diameter Distribution (OECD Test Guideline 110)	(S) Cellulose, polymer with 1,1′-[2-ethyl-2-[(3-mercapto-1-oxopropoxy)methyl]-1,3-propanediyl] bis(3-mercaptopropanoate) and 1,2,3-propanetriol bis(2-methyl-2-propenoate), peroxydisulfuric acid ([(ho)s(o)2]2o2) ammonium salt (1:2)- and sodium (disulfite) (2:1)-initiated.
P–23–0120	04/03/2024	Particulates Not Otherwise Regulated, Total (NIOSH Test Guideline 0500)	(G) Cobalt lithium manganese nickel oxide, metals.
P–24–0133	04/22/2024	Molecular weight determination, Skin Irritation Test, Acute Ecotoxicity in Daphnia, Ecotoxicity in Algae, Eye Irritation Test, Acute Ecotoxicity in Fish, Chronic Ecotoxicity in Daphnia.	(S) Siloxanes and Silicones, di-Me, hydrogen-terminated, polymers with 1,6-diisocyanatohexane and polyethylene glycol monoallyl ether, N3-[3-(dimethylamino)propyl]-N1,N1-dimethy1–1,3-propanediamine-blocked.

TABLE IV—TEST INFORMATION RECEIVED FROM 4/1/2024 TO 4/30/2024—Continued

Case No.	Received date	Type of test information	Chemical substance
P–24–0135	04/19/2024	14-Day Repeated Dose Oral Range Finding Test, 90-Day Repeated Dose Oral Toxicity Study, Pre-Natal Development Toxicity Study, Bacterial Reverse Mutation Assay (Ames Test), *In Vitro* Micronucleus Test in Human Lymphocytes, In Vitro Mutation Test using Mouse Lymphoma Cells, Reproduction and Growth of the Earthworm Test, Seedling Emergence and Seedling Growth Test, Soil Microflora, Nitrogen, and Carbon Transformation Test, Ready Biodegradation Test, Feasibility Test in Aerobic Aquatic Sediment, Feasibility Test in Aerobic Soil, Acute Oral Toxicity Test, EPISKIN Skin Irritation Test, Eye Irritation (BCOP) Test, Skin Sensitization (LLNA) Test, Multi-Endpoint Physical Properties Tests, Hazardous Physical Properties Tests, Vapor Pressure Test, Flammability Test, Fish Early Life Stage Test, Acute Daphnia Test, Daphnia Reproduction Test, Algal Growth Inhibition Test, Respiration Inhibition Test with Activated Sludge.	(S) Phosphoric acid, mono- and di-C16–18-alkyl esters.
P–24–0049, P–24–0050, P–24–0051, P–24–0052, P–24–0053, P–24–0054, P–24–0055, P24–0056, P–24–0057.	04/25/2024	Vapor Pressure Measurements	(G) Heteromonocyclic functionalized fatty amides, (G) Sodium salts of functionalized fatty acids, (G) Functionalized fatty amidoamine, (G) Functionalized fatty acids, (G) Fatty acid polyamine condensate, (G) Fatty acid polyamine condensate, (G) Fatty acid polyamine condensate, (G) Fatty acid polyamine condensate, (G) Fatty amidoamine.
P–24–0137	04/19/2024	Acute Eye Irritation/Corrosion, Two-generation Reproduction Toxicity Study, Daphnia Magna Reproduction Study, OECD HT—Two-generation reproduction, OECD–HT—Acute Eye Irritation Corrosion, OECD HT—Daphnia Magna Reproduction, 90-day oral toxicity study in rats, Activated sludge, respiration inhibition test, 90-Day Oral Toxicity Study in Rats, Acute dermal irritation-corrosion, Acute dermal toxicity in rats, Acute eye irritation-corrosion test, Acute oral toxicity in rats, Acute Toxicity in Fish, Algae growth inhibition test, Acute Toxicity to Algae, Adsorption-Desorption test, Ames Test, Acute Toxicity to Daphnia sp., OECD HT—90-Day Oral Toxicity Study in Rats, OECD HT—Ames Test, OECD–HT—Activated sludge, respiration inhibition test, OECD–HT—Acute dermal irritation-corrosion, OECD–HT—Acute dermal toxicity in rats, OECD–HT—Acute eye irritation-corrosion test, OECD–HT—Acute oral toxicity in rats, OECD–HT—Acute Toxicity in Fish, OECD–HT—Acute Toxicity to Algae, OECD–HT—Adsorption-desorption study, OECD–HT—Adsorption-Desorption test, OECD–HT—Algae growth inhibition test, OECD–HT—Acute Toxicity to Daphnia sp., Acute Dermal Toxicity Study in Rats, Acute Oral Toxicity Study in Rats, OECD–HT—Acute Dermal Toxicity Study in Rats, OECD–HT—Acute Oral Toxicity Study in Rats, Review of 2-Gen Reproductive Toxicity Study, Seed Germination and Root Elongation Toxicity Test, Sediment/Water Toxicity Test with Chironomus yoshimatsui, Skin sensitization study in guinea pigs, Two-generation Reproduction Toxicity Study, Teratogenicity Test in Rats, OECD–HT—Skin sensitization study in guinea pigs, OECD HT—Seed Germination and Root Elongation Toxicity Test, OECD–HT—SedimentWater Toxicity Test, OECD HT—Two-generation Reproduction Toxicity Study, Daphnia sp. acute immobilization test, Daphnia magna reproduction test, Earthworm, acute toxicity test, Daphnia sp. reproduction test, Fish short-term toxicity test on embryo and sac-fry stages, Fish Acute Toxicity Test, In Vitro Mammalian Cell Gene Mutation Test, In vitro mammalian chromosome aberration study, In vitro skin irritation test-human skin model test, In vitro mammalian chromosome aberration test, Prenatal Development Toxicity Study in Rats, In vitro test for gene mutations, Inherent Biodegradability Test, Ready Biodegradability Study, OECD–HT—Daphnia magna reproduction test, OECD HT—In Vitro Mammalian Cell Gene Mutation Test, OECD HT—In vitro test for gene mutations, OECD–HT—In vitro skin irritation test-human skin model test, OECD–HT—Daphnia sp. acute immobilization test, OECD–HT—Daphnia sp. reproduction test, OECD–HT—Earthworm, acute toxicity test, OECD–HT—Fish Acute Toxicity Test, OECD–HT—Fish short-term toxicity test on embryo and sac-fry stages, OECD–HT—Inherent Biodegradability Test, OECD–HT—Ready Biodegradability Study, OECD HT—In vitro mammalian chromosome aberration test, OECD HT—In vitro mammalian chromosome aberration study, OECD HT—Prenatal Development Toxicity Study in Rats.	(G) Alkene, reaction products with oxide, hydrolyzed, alkali metal salts.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 16, 2024.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024–11157 Filed 5–20–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1031; FR ID 220491]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (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. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 22, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1031.

Title: Commission's Initiative to Implement Enhanced 911 (E911) Emergency Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and State, Local and Tribal government.

Number of Respondents and Responses: 22 respondents; 23 responses.

Estimated Time per Response: 2–4 hours.

Frequency of Response: On occasion, one-time reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 70 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission is seeking an extension of this information collection from the Office of Management and Budget (OMB) for the three year approval. The information collection requirements ontained in this collection guarantee continued cooperation between wireless carriers and Public Safety Answering Points (PSAPs) in complying with the Commission's E911 requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–11043 Filed 5–20–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1030; FR ID 220261]

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.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before June 20, 2024.

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: 3060–1030.

Title: Service Rules for Advanced Wireless Services (AWS) in the 1.7 GHz and 2.1 GHz Bands.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; state, local, or tribal government; Federal Government and not for-profit institutions.

Number of Respondents: 357 Respondents; 2,835 responses.

Estimated Time per Response: 0.25 to 5 hours.

Frequency of Response: Annual, semi-annual, one time, and on occasion reporting requirements, recordkeeping requirement, third-party disclosure requirements, and every ten years reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 1, 2, 4(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, and sections 6003, 6004, and 6401 of the Middle Class Tax Relief Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 151, 152, 154(i), 201, 301, 302(a), 303, 307, 308, 309, 310, 316, 319, 324, 332, 333, 1403, 1404, and 1451.

Total Annual Burden: 8,118 hours.

Total Annual Cost: $576,000.

Needs and Uses: The currently approved information collections under Control No. 3060–1030 relate to three groups of Advanced Wireless Service (''AWS'') spectrum, commonly referred to as AWS–1, AWS–3, and AWS–4. The FCC's policies and rules apply to application, licensing, operating and technical rules for this spectrum. The respondents are AWS licensees, incumbent Fixed Microwave Service (FS) and Broadband Radio Service (BRS) licensees that relocate out of the AWS bands. AWS licensees also have coordination requirements with certain Federal Government incumbents.

Recordkeeping, reporting, and third-party disclosure requirements associated with the FCC items listed in item 1 of the supporting statement will be used by incumbent licensees and new entrants to negotiate relocation agreements and to coordinate operations to avoid interference. The information also will be used by licensees to determine reimbursement obligations of other licensees pursuant to the Commission's rules, and notify to notify such licensees of their reimbursement obligations. Additionally, the information will be used to facilitate dispute resolution and for FCC oversight of the cost-sharing plan.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–11045 Filed 5–20–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0824; FR ID 220367]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (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. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before July 22, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–0824.

Title: Service Provider and Billed Entity Identification Number and Contact Information Form.

Form Number: FCC Form 498.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and Not-for-profit institutions.

Number of Respondents and Responses: 26,000 respondents; 26,000 responses.

Estimated Time per Response: 0.75 hours.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154 and 254 the Communications Act of 1934, as amended.

Total Annual Burden: 19,500 hours.

Total Annual Cost: No cost.

Needs and Uses: One of the functions of the Universal Service Administrative Company (USAC) is to provide a means for the billing, collection and disbursement of funds for the universal service support mechanisms. On October 1998, the OMB approved FCC Form 498, the ''Service Provider Information Form'' to enable USAC to collect service provider name and address, telephone number, Federal Employer Identification Number (EIN), contact names, contact telephone numbers, and remittance information.

FCC Form 498 enables participants to request a Service Provider Identification Number (SPIN) and provides the official record for participation in the universal service support mechanisms. The remittance information provided by participants on FCC Form 498 enables USAC to make payments to participants in the universal service support mechanisms.

Pursuant to 47 CFR 54.202, 54.301, 54.303, 54.307, 54.309, 54.311, 54.504, 54.407, 54.422, 54.514, 54.515, 54.679, 54.702, 54.802, and 54.902, USAC collects service provider name, phone numbers, other contact information, and remittance information for all four of the universal service support mechanisms—Schools and Libraries, Rural Health Care, High-Cost and Low-Income (commonly referred to as Lifeline). On July 23, 2014, the Commission released an Order and FNPRM (WC Docket No. 13–184, FCC 14–99; 79 FR 49160, August 19, 2014) (*E-rate Modernization Order*) modernizing the E-rate program. Specifically, the *E-rate Modernization Order* revised the Commission rules to allow an applicant that pays the full cost of the Schools and Libraries (E-rate) supported services to a service provider

to receive direct reimbursement from USAC.

The Digital Accountability and Transparency Act (DATA Act) directs Federal agencies to report financial obligations and standardize the information that recipients of federal funds report to government agencies. To comply with the DATA Act, the DATA Act Business Type is reported on FCC Form 498. When completing or updating this form, service providers and billed entities are required to select up to three business types that best describes the organization.

The Commission's Public Notice released April 6, 2022 announced the transition from using the Data Universal Numbering System Number (DUNS) to a Unique Entity Identifier (UEI) for *SAM.GOV*.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–11042 Filed 5–20–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 89 FR 41435.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, May 16, 2024 at 10:00 a.m.

Hybrid Meeting: 1050 First Street NE, Washington, DC (12th Floor) and Virtual.

CHANGES IN THE MEETING: The following matters were also discussed:

Eligibility Report—Mike Pence for President

Mike Pence and Mike Pence for President—Date of Ineligibility (LRA 1194)

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(*Authority:* Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2024–11190 Filed 5–17–24; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: May 29, 2024; 1:00 p.m.

PLACE: The meeting will be held at the Surface Transportation Board at the address below and also streamed live on the Federal Maritime Commission's YouTube channel.

Surface Transportation Board, 395 E. Street SW, Room #1042 (Hearing Room), Washington, DC 20423

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The meeting will be held on May 29, 2024, beginning at 1:00 p.m. in the Hearing Room of the Surface Transportation Board and the public portion of the meeting will be streamed live on the Federal Maritime Commission's YouTube channel. Any person wishing to attend the public portion of the meeting in-person should report to Surface Transportation Board with enough time to clear building security procedures. If technical issues prevent the Commission from streaming live, the Commission will post a recording of the public portion of the meeting on the Commission's YouTube channel following the meeting.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC:

1. Staff Update on Bureau of Certification and Licensing Programs (Ocean Transportation Intermediary & Passenger Vessel Operator)
2. Staff Update on Vessel-Operating Common Carrier Audit Program

PORTIONS CLOSED TO THE PUBLIC:

1. Staff Update on Vessel-Operating Common Carrier Audit Program

CONTACT PERSON FOR MORE INFORMATION: David Eng, Secretary, (202) 523–5725.

David Eng,

Secretary, Federal Maritime Commission.

[FR Doc. 2024–11182 Filed 5–17–24; 11:15 am]

BILLING CODE 6730–02–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 received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

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 June 20, 2024.

A. Federal Reserve Bank of Cleveland (Nadine M. Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *North Valley Bancshares, Inc., Zanesville, Ohio;* to acquire Commodore Financial Network, Inc., and thereby indirectly acquire Commodore Bank, both of Somerset, Ohio.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *South Story Bancshares, Inc.;* to become a bank holding company by acquiring South Story Bank & Trust, both of Slater, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–11135 Filed 5–20–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

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 June 5, 2024.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *D. Alan Thigpen, Vidalia, Georgia;* a member of the Thigpen Family Group, to retain voting shares of Heart of Georgia Bancshares, Inc., Vidalia, Georgia, and thereby indirectly retain voting shares of Mount Vernon Bank, Mount Vernon, Georgia, and Bank of Lumber City, Lumber City, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–11134 Filed 5–20–24; 8:45 am]

BILLING CODE P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 105152024–1111–01]

Notice of Proposed Subaward Under a Council-Selected Restoration Component Award

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) publishes this notice of a proposed subaward from the Florida Department of Environmental Protection (FDEP) to the Pensacola and Perdido Bays Estuary Program, a nonprofit organization, for the purpose of planning, design and permitting of a stream restoration project in accordance with the Florida Water Quality Improvement Program Award as approved in the Council's Initial Funded Priorities List (FPL).

FOR FURTHER INFORMATION CONTACT: Please send questions by email to Bjorn Johnson at *bjorn.johnson@restorethegulf.gov* or (504) 444–1260.

SUPPLEMENTARY INFORMATION: Section 1321(t)(2)(E)(ii)(III) of the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies Act of 2012* (33 U.S.C. 1321(t) and *note*) (RESTORE Act) and Treasury's implementing regulation at 31 CFR 34.401(b) require that, for purposes of awards made under the Council-Selected Restoration Component of the RESTORE Act, a State or Federal award recipient may make a grant or subaward to or enter into a cooperative agreement with a nongovernmental entity that equals or exceeds 10 percent of the total amount of the award provided to the State or Federal award recipient only if certain notice requirements are met. Specifically, at least 30 days before the State or Federal award recipient enters into such an agreement, the Council must publish in the **Federal Register** and deliver to specified Congressional committees the name of the recipient and subrecipient; a brief description of the activity, including its purpose; and the amount of the award. This notice accomplishes the **Federal Register** publication requirement.

Description of Proposed Action

As specified in the Initial FPL, which is available on the Council's website at *https://www.restorethegulf.gov/council-selected-restoration-component/funded-priorities-list,* RESTORE Act funds in the amount of $6,750,000 will support the Florida Water Quality Improvement Program Award to the FDEP. FDEP will provide a subaward in the amount of $2,200,000 to the Pensacola and Perdido Bays Estuary Program for planning, design and permitting of a stream restoration project.

Keala J. Hughes,

Director of External Affairs & Tribal Relations, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2024–11060 Filed 5–20–24; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2024–0040, NIOSH–063–E]

National Institute for Occupational Safety and Health; Human Factors Considerations for the Fire Fighter Fatality Investigation and Prevention Program

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH), in the Department of Health and Human Services, requests feedback about its Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) investigation and report process for traumatic injuries. NIOSH is interested in how human factors might be considered during investigations including but not limited to communication, team dynamics, psychological stress, and safety culture, and how these factors impact decision-making during responses. If applicable, information will be used to improve reporting templates and processes to provide a holistic lens into the causes and prevention of line-of-duty deaths (LODD).

DATES: Comments must be received by July 22, 2024.

ADDRESSES: Comments may be submitted through either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (follow the

instructions for submitting comments), or

• *By Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226–1998.

Instructions: All written submissions received in response to this notice must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2024–0040, NIOSH–063–E) for this action. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Emily Haas, 626 Cochrans Mill Rd, Pittsburgh, PA 15236; Telephone (412) 386–4627 (this is not a toll-free number); Email: *NIOSHFireTrauma@cdc.gov.*

SUPPLEMENTARY INFORMATION: The NIOSH FFFIPP conducts independent investigations of firefighter LODD and recommends ways to prevent deaths and traumatic injuries. Since its inception in 1998, the NIOSH FFFIPP has held periodic meetings with the fire service community and interested parties to seek input about the program. These meetings have been an important component of the program and are vital to ensure the program is meeting the needs and expectations of those it serves. The FFFIPP has posted the results of these periodic meetings on its website at: *https://www.cdc.gov/niosh/fire/abouttheprogram/ourworkreviewed/ourworkreviewed.html.*

Input received from these meetings and from individuals has emphasized the need to consider factors beyond the physical environment in which response activities occur. As examples, effective communication and team dynamics, psychological stress and resilience, organizational leadership, and safety culture may impact decision-making, task execution, and job performance. However, the FFFIPP program serves as a public health effort; therefore, recommendations do not and cannot enforce compliance with state or federal job safety and health standards or determine fault or place blame on fire departments or individual firefighters. The purpose of this request for information (RFI) is to ascertain (1) the public's interest and need for NIOSH to incorporate human factors considerations into LODD investigations; (2) specific human factors elements that should be considered; (3) methods that can be employed during investigations to collect, analyze, and document this information through reliable quantitative and qualitative approaches; and (4) ways to incorporate human factors findings and recommendations into reports without placing blame on fire departments or firefighters. Information related to human factors in LODD investigations may include but is not limited to:

- Considerations around communication, including team dynamics and leadership communication
- Potential for environmental elements to impact cognitive function (*e.g.,* distraction)
- Operational stressors to be considered
- Ways to retroactively assess emotional and psychological stress
- Ways to retroactively assess physiological stress and resilience (*e.g.,* sleep deprivation and fatigue)
- Safety culture
- Components of risk profile narratives
- Organizational leadership practices
- Research needs and social science or psychological methods to objectively collect this information
- Methods to integrate this information into reports without placing blame (*e.g.,* identifying systematic issues that drive or allow behaviors, actions, and decisions)

LODD are complex events that are affected by many interdependent factors. These considerations or factors might vary depending on whether the fire department is serving a rural, urban, suburban, or wildland-urban interface area; is career, volunteer, or combination; and the work schedule and shifts of the responding firefighters. These aspects, among others, can be recognized when responding with feedback.

NIOSH plans to review and assess the public comments and information provided to determine how, if applicable, the FFFIPP could be updated to incorporate human factors considerations into LODD investigations. Additional information is available on the NIOSH FFFIPP—About the Program Page (*https://www.cdc.gov/niosh/fire/abouttheprogram/abouttheprogram.html*). NIOSH will update this page and investigation processes as necessary to be consistent with the assessment of the information obtained from this RFI and other means of information-gathering.

To reiterate, this RFI is intended to announce the opportunity for the public to provide NIOSH with information about considerations and approaches to assess human factors and, if applicable, inclusion in its FFFIPP LODD investigation and reporting processes for traumatic injuries. Information related to human factors and the fire service in the following areas is especially desired: the need for this information to be collected, specific human factors elements that should be considered, social science and psychological methods that could be employed during investigations, and objective reporting recommendations.

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2024–11059 Filed 5–20–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10695]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 22, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10695—Quality Payment Program/Merit-Based Incentive Payment System (MIPS) Surveys and Feedback Collections

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Quality Payment Program/Merit-Based Incentive Payment System (MIPS) Surveys and Feedback Collections; *Use:* The purpose of this submission is to request approval for generic clearance of a program of survey and feedback collections supporting the Quality Payment Program which includes the Merit-Based Incentive Payment System (MIPS) and Advanced Alternative Payment Models (AAPMs). MIPS is a program for certain eligible clinicians that makes Medicare payment adjustments based on performance on quality, cost and other measures and activities, and that consolidates components of three precursor programs—the Physician Quality Reporting system (PQRS), the Value Modifier (VM), and the Medicare Electronic Health Record (EHR) Incentive Program for eligible professionals. AAPMs are a track of the Quality Payment Program that offer incentives for achieving threshold levels of payments or patients in Advanced APMs or Other Payer Advanced APMs. Under the AAPM path, eligible clinicians may become Qualifying APM Participants (QPs) and are excluded from MIPS. Partial Qualifying APM Participants (Partial QPs) may opt to report and be scored under MIPS.

This generic clearance will cover a program of surveys and feedback collections designed to strategically obtain data and feedback from MIPS eligible clinicians, third-party intermediaries, Medicare beneficiaries, and any other audiences that would support the Agency in improving MIPS or the Quality Payment Program. The specific collections we intend to conduct are: Human Centered Design (HCD) User Testing Volunteer Sign-Up Survey; HCD User Satisfaction, Product Usage, and Benchmarking Surveys; and Physician Compare (and/or successor website) User Testing. *Form Number:* CMS–10695 (OMB control number: 0938–1399); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and Individuals; *Number of Respondents:* 630,300; *Total Annual Responses:* 630,300; *Total Annual Hours:* 61,035. (For policy questions regarding this collection, contact Renee O'Neill at 410–786–8821.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–11131 Filed 5–20–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10391 and CMS–10856]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 22, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection

document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10391 Methods for Assuring Access to Covered Medicaid Services Under 42 CFR 447.203 and 447.204

CMS–10856 Medicaid Managed Care and Supporting Regulations

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Methods for Assuring Access to Covered Medicaid Services Under 42 CFR 447.203 and 447.204; *Use:* Sections 447.203 and 447.204 require that states: ''assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.'' The information is used by states to document that access to care is in compliance with section 1902(a)(30)(A) of the Social Security Act, to identify issues with access within a state's Medicaid program, and to inform any necessary programmatic changes to address issues with access to care. CMS will use the information to monitor ongoing compliance with section 1902(a)(30)(A) of the Act, and to make informed approval decisions on State plan amendments that propose to make Medicaid rate reductions or restructure payment rates. Beneficiaries, providers, and other affected stakeholders may use the information to raise access issues to state Medicaid agencies and work with agencies to address those issues. *Form Number:* CMS–10391 (OMB control number: 0938–1134); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 341; *Total Annual Hours:* 15,305. (For questions regarding this collection contact Jeremy Silanskis at 410–786–1592.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Managed Care and Supporting Regulations; *Use:* The collection of information request pertains to the attestation collection requirement at 42 CFR 438.6(c)(2)(ii)(H), which requires that providers receiving payment under a State directed payment attest that they do not participate in any hold harmless arrangement for any health care-related tax as specified in § 433.68(f)(3) in which the State or other unit of government imposing the tax provides for any direct or indirect payment, offset, or waiver such that the provision of the payment, offset, or waiver directly or indirectly guarantees to hold the taxpayer harmless for all or any portion of the tax amount, and ensure either that (upon CMS request) such attestations are available, or that the State provides an explanation that is satisfactory to CMS about why specific providers are unable or unwilling to make such attestations. *Form Number:* CMS–10856 (OMB control number: 0938–1453); *Frequency:* Yearly and once; *Affected Public:* Private sector and State, Local, or Tribal Governments; *Number of Respondents:* 1,088,094; *Total Annual Responses:* 1,088,138; *Total Annual Hours:* 145,523. (For questions regarding this collection contact Abigail Walker at 410–786–1725.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–11041 Filed 5–20–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Behavioral Interventions To Advance Self-Sufficiency-Next Generation (BIAS–NG) (Office of Management and Budget #0970–0502)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) requests Office of Management and Budget (OMB) approval to modify and extend the approval of the ACF Behavioral Interventions to Advance Self-Sufficiency-Next Generation (BIAS–NG) Project Overarching Generic (OMB #: 0970–0502; Expiration date: 8/31/2025.) Under this overarching clearance, ACF collects data as part of rapid cycle testing and evaluation, to inform the design of interventions informed by behavioral science and to better understand the mechanisms and effects of such interventions.

Interventions have been and will continue to be developed in the program area domains of Temporary Assistance for Needy Families (TANF), child welfare, and Early Head Start/Head Start (EHS/HS). This revision would also allow for collection of data in the child care program area, and would extend the approval of the overarching generic. These interventions are intended to improve outcomes for participants in these programs.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), ACF is soliciting public comment on the

specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OPRE is conducting the BIAS–NG project, which uses behavioral insights to design and test interventions intended to improve the efficiency, operations, and efficacy of human services programs. The BIAS–NG project is applying and testing behavioral insights to ACF programs including TANF, child welfare, and EHS/HS, and intends to expand these efforts to child care. This notice is a request for comments on ACF's proposal to revise and extend a previously approved collection, which included data collection to design and test interventions in the TANF, child welfare, and EHS/HS domains. Under the approved pilot generic clearance, OPRE has already conducted work with seven sites to conduct seven tests, and is planning to continue to work with at least one additional site, conducting one or more tests of behavioral interventions for a total of nine tests of behavioral interventions. All approved information collection activities can be found here: *https://www.reginfo.gov/public/do/PRAICList?ref_nbr=202206-0970-002.*

In addition to extending approval, this approval would also allow OPRE to conduct tests in the newly added program area of child care. The design and testing of BIAS–NG interventions is rapid and, to the extent possible, iterative. Each specific intervention is designed in consultation with agency leaders and launched as quickly as possible. To maximize the likelihood that the intervention produces measurable, significant, and positive effects on outcomes of interest, rapid cycle evaluation techniques will be employed in which proximate outcomes will be measured to allow the research team to more quickly iterate and adjust the intervention design, informing subsequent tests. Due to the rapid and iterative nature of this work, OPRE sought and received approval for an overarching generic clearance to conduct this research. Following standard OMB requirements for generic clearances, once instruments subject to PRA are tailored to a specific site and the site's intervention, OPRE submits an individual generic information collection request under this umbrella clearance. Each request includes the individual instrument(s), a justification specific to the individual information collection, a description of the proposed intervention, and any supplementary documents. Each specific information collection includes up to two submissions—one submission for the formative stage research and another submission for any further data collection requiring burden during the testing phase. The type of information to be collected and the uses of the information is described in the supporting statements, found here: *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202206-0970-002.*

Respondents: (1) Program Administrators, (2) Program Staff, and (3) Program Clients.

ANNUAL BURDEN ESTIMATES (TANF, CHILD WELFARE, EHS/HS, CHILD CARE)

Instrument	Number of respondents (TANF, CW, EHS/HS, CC) (total over request period)	Number of responses per respondent (total over request period)	Average burden hours per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Phase 3: Diagnosis and Design					
Administrator interviews/focus groups	48	1	1	48	16
Staff interviews/focus groups	400	1	1	400	133
Client interviews/focus groups	400	1	1	400	133
Client survey	400	1	.25	100	33
Staff Survey	400	1	.25	100	33
Phase 4: Evaluation					
Administrator interviews/focus groups	96	1	1	96	32
Staff interviews/focus groups	800	1	1	800	267
Client interviews/focus groups	800	1	1	800	267
Client survey	12,000	1	.25	3,000	1,000
Staff Survey	1,200	1	.25	300	100

Estimated Total Annual Burden Hours: 2,014.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 1310.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–11077 Filed 5–20–24; 8:45 am]

BILLING CODE 4184–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of Population Affairs, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Health, Office of Population Affairs (OPA) has modified its organizational structure.

DATES: This new organizational structure was approved by the Secretary of Health and Human Services and takes effect on May 14, 2024.

FOR FURTHER INFORMATION CONTACT: Jessica Swafford Marcella, Deputy Assistant Secretary for Population Affairs, Office of Population Affairs, Office of the Assistant Secretary for Health, Department of Health and Human Services at *Jessica.marcella@hhs.gov* and 240–453–2800.

SUPPLEMENTARY INFORMATION: Part A (Office of the Secretary, U.S. Department of Health and Human Services) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (60 FR 56605, dated November 9, 1995, and corrected at 75 FR 53304, August 31, 2010, amended at 82 FR 3005, dated January 10, 2017, and amended, most recently at 84 FR 14951, dated April 12, 2019) is amended to reflect the reorganization of the Office of Population Affairs (OPA), Office of the Assistant Secretary for Health (OASH). This reorganization will streamline operations and improve the efficiency and effectiveness of OPA. OPA is responsible for implementing and administering the Title X family planning program, managing the Office of Adolescent Health, which is headed by a director, and implementing and administering the Teen Pregnancy Prevention program and other adolescent health activities. The changes are as follows:

I. *Under Part C, section C–G, Organization, revise to organize OPA staff across six Divisions:* Administration and Operations, Adolescent Health Programs, Clinical and Scientific Affairs, Policy and External Affairs, Research and Evaluation, and Title X Service Delivery. The Division of Administration and Operations will manage overall operations for OPA, including staff recruitment and retention, budgeting, training, and travel. The Division of Adolescent Health Programs will lead implementation of the Teen Pregnancy Prevention Program and other adolescent health programmatic activities. The Division of Clinical and Scientific Affairs will provide clinical and scientific expertise, consultation, and oversight for all OPA staff and activities. The Division of Policy and External Affairs will lead all policy and communication activities for the office. The Division of Research and Evaluation will oversee data collection for OPA programs and will lead OPA's research and evaluation activities. The Division of Title X Service Delivery will lead implementation of the Title X service delivery program.

II. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, if allowed, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Xavier Becerra,

Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2024–11058 Filed 5–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–4 Study Section.

Date: June 14, 2024.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Steven G Britt, MD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–480–1953, *steve.britt@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Review of UE5 Training Applications.

Date: July 12, 2024.

Time: 2:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: May 15, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11067 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Translating Research To Practice to End the Overdose Crisis.

Date: June 27, 2024.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC,

6021 Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Education Activities for Responsible Analyses of Complex, Large-Scale Data.

Date: July 3, 2024.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Li Rebekah Feng, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC, 6021 Bethesda, MD 20892, (301) 827–7245, *rebekah.feng@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Targeting Inflammasomes in HIV and Substance Use.

Date: July 8, 2024.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC, 6021 Bethesda, MD 20892, (301) 594–9460, *Soyoun.cho@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 15, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11068 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meetings

Notice is hereby given of a change in the meetings of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, VCID Center Without Walls, June 11, 2024, 10:00 a.m. to 6:00 p.m.; BRAIN Initiative Connectivity across Scales Data Coordinating Center (BRAIN CONNECTS DCC) (U24 Clinical Trial Not Allowed), June 13, 2024, 10:00 a.m. to 12:30 p.m.; and BRAIN Initiative: Research Resource Grants for Technology Integration and Dissemination (U24 Clinical Trial Not Allowed), June 20, 2024, 10:00 a.m. to 6:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which were published in the **Federal Register** on May 15, 2024, FR Doc. 2024–10633, 89 FR 42479.

This notice is being amended to change the meeting formats of all three meetings from in-person to virtual. The dates and times of these meetings will remain the same. The meetings are closed to the public.

Dated: May 15, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11075 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, HEAL Initiative: Digital Biomarker, June 04, 2024, 10:00 a.m. to June 04, 2024, 06:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on May 13, 2024, FR Doc 2024–10379, 89 FR 41451.

This notice is being amended to change the meeting format from in-person to virtual. The date and time will remain the same. The meeting is closed to the public.

Dated: May 15, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11074 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Bioethics and Tech Development.

Date: June 20, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Dem II, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Debanjan Goswami, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 827–4614, *debanjan.goswami@nih.gov*.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Career Development Awards (Ks) and Conference support (R13) Review.

Date: June 25, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Dem II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Alexander O Komendantov, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 496–2763, *alexander.komendantov@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: May 15, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11069 Filed 5–20–24; 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 1009 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Study Section.

Date: June 20–21, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Washington, DC/Georgetown, 2201 M Street NW, Washington, DC 20037.

Contact Person: Hailey P. Weerts, 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 3G74, Rockville, MD 20852, (240) 669–5931, *hailey.weerts@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: May 15, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11064 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Mentored Career and Research Development Awards (Ks).

Date: June 12–14, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, NIMHD DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Deborah Ismond, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2704, *ismonddr@mail.nih.gov*.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13).

Date: June 27, 2024.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, NIMHD DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–827–2061, *ivan.navarro@nih.gov*.

Dated: May 15, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11071 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 1009 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 Nursing Research Initial Review Group.

Date: June 20, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua R Wolff, Ph.D., Scientific Review Officer, 6701 Democracy Boulevard, Bethesda, Md 20817, (301) 793–5758, *josh.wolff@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 15, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11072 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Societal and Ethical Issues in Research.
Date: June 14, 2024.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Elia E Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301–827–7189, *femiaee@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Genetics Study Section.
Date: June 17–18, 2024.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville 1750 Rockville Pike Rockville, MD 20852.
Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@mail.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Chemical Biology and Probes Study Section.
Date: June 17–18, 2024.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *eissenstatma@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.
Date: June 17–18, 2024.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road Alexandria, VA 22314.
Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, (301) 402–3019, *andrew.wolfe@nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Viral Pathogenesis and Immunity Study Section.
Date: June 17–18, 2024.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Tysons Corner, 8028 Leesburg Pike Tysons, VA 22182.
Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301)435–1742, *kaushikbasun@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.
Date: June 17–18, 2024.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW Washington, DC 20015.
Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Radiation Therapeutics and Biology Study Section.
Date: June 17–18, 2024.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, Bethesda One, Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Neuropsychiatric, Substance Use, And Neurological Disorders.
Date: June 17–18, 2024.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Bethesdan Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Lai Yee Leung, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 1011D Bethesda, MD 20892 (301) 827–8106 *leungl2@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.
Date: June 17–18, 2024.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael Patrick O'Connell, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *oconnellmp@mail.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney Endocrine and Digestive Disorders Study Section.
Date: June 17–18, 2024.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Allison Kurti, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007J, Bethesda, MD 20892, (301) 594–1814, *kurtian@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Drug and Biologic Therapeutic Delivery Study Section.
Date: June 17–18, 2024.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Janice Duy, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3139, *janice.duy@nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Interoception and Chemosensation Study Section.
Date: June 17–18, 2024.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, *ohmm@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.
Date: June 17–18, 2024.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Stefania Senger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stefania.senger@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special

Topics: Molecular and Cellular Sciences and Technologies.

Date: June 17–18, 2024.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Drug Development and Therapeutics (CDDT).

Date: June 17–18, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Sciences in Diagnostics, Devices, and Rehabilitation.

Date: June 17–18, 2024.

Time: 9:30 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amber Taylor Collins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–5245, *amber.collins@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 15, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11065 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 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: Oncology 2—Translational Clinical Integrated Review Group; Translational Immuno-oncology Study Section.

Date: June 17–18, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Elena Cardenas-Corona, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *maria.cardenas-corona@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 15, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11111 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 1009 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 Nursing Research Special Emphasis Panel; NINR BRIDGE to Care RFA Review Meeting.

Date: June 25–26, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing, Research 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Nursing Research, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan.bhattacharyya@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 15, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11073 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Early Phase Clinical Trials of Natural Products (NP).

Date: June 14, 2024.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Democracy II, 6707 Democracy Blvd. Bethesda, MD 20892.

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *shiyong.huang@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training

in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 15, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–11070 Filed 5–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2024–0017; OMB No. 1660–NW173]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for United States Fire Administration Training, Research, Data, and Prevention Collection

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the creation of a new generic collection to allow faster implementation of feedback from our respondents into the instruments used by the United States Fire Administration (USFA) every day.

DATES: Comments must be submitted on or before July 22, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *http://www.regulations.gov* under Docket ID FEMA–2024–0017. Follow the instructions for submitting comments.

All submissions received must include the Agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ashlee Vandewater, Program Specialist, United States Fire Administration, *ashlee.vandewater@fema.dhs.gov* or 301–447–1483. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Fire Prevention and Control Act of 1974 (Pub. L. 93–498, as amended) (15 U.S.C. 2201 *et seq.*) originates from an exhaustive and comprehensive examination of the Nation's fire problem, which made detailed findings as to the extent of this problem in terms of human suffering and loss of life and property, and made ninety thoughtful recommendations. Many of these recommendations relate directly to the instruments which are a part of this collection of information such as the National Fire Data Center, several fire data repositories, the National Fire Academy, and Fire & Emergency Management Services (EMS) information requests for safety and educational materials, just to name a few.

Executive Order 12862 directs Federal Agencies to provide service to the public that matches or exceeds the best service available in the private sector. To work continuously to ensure that our programs are effective and meet our customers' needs, FEMA seeks to obtain Office of Management and Budget approval of a generic clearance to collect qualitative and quantitative data feedback on our service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions and numerical data on fire and EMS incidents that yield quantitative results that can be generalized to the population of study.

USFA maintains several information technology systems which assist USFA in delivering information, products, and services to the fire service, affiliated organizations, and the public. Collecting information for these instruments aid in the administration of USFA programs in support of state, local, Tribal, and territorial assistance as well as individuals, Federal Government, and members of the private sector.

This collection of information is necessary to enable the USFA to garner customer and stakeholder feedback in an efficient, timely manner in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the USFA's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the USFA and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Collection of Information

Title: Generic Clearance for United States Fire Administration Training, Research, Data, and Prevention Collection.

Type of Information Collection: New information collection.

OMB Number: 1660–NW173.

FEMA Forms: Not Applicable.

Abstract: The United States Fire Administration (USFA) provides these forms to support state, local, tribal, and territorial organizations as well as individuals of the public, Federal Government, and private sector members through the information, products, and services relevant to the fire service, affiliated organizations, and the public. Collecting of information for these forms aid in the administration of USFA programs, such as the National Fire Data Center, several fire data repositories, the National Fire Academy, and fire and emergency management services information requests for safety and educational materials, just to name a few.

Affected Public: State, Local, or Tribal Governments; Private Sector, For profit; Private Sector, Not for profit.

Estimated Number of Respondents: 291,537.

Estimated Number of Responses: 28,324,337.

Estimated Total Annual Burden Hours: 6,670,972.

Estimated Total Annual Respondent Cost: $351,426,805.

Estimated Respondents' Operation and Maintenance Costs: $0.00.

Estimated Respondents' Capital and Start-Up Costs: $0.00.

Estimated Total Annual Cost to the Federal Government: $5,143,750.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper

performance of the Agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent B. Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–11124 Filed 5–20–24; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0005]

Notice of President's National Infrastructure Advisory Council Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of open *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Infrastructure Advisory Council (NIAC) meeting.

DATES: *Meeting Registration:* Registration is required to attend the meeting and must be received no later than 5:00 p.m. Eastern Daylight Time (EDT) on June 5, 2024. For more information on how to participate, please contact *NIAC@cisa.dhs.gov*.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. EDT on June 5, 2024.

Written Comments: Written comments must be received no later than 5:00 p.m. EDT on June 5, 2024.

Meeting Date: The NIAC will meet on June 11, 2024, from 2:00 p.m. to 5:00 p.m. EDT. The meeting may close early if the council has completed its business.

ADDRESSES: The National Infrastructure Advisory Council's open session will be held in person at 1650 17th St. NW, Washington, DC; however, members of the public may participate via teleconference only. Requests to participate will be accepted and processed in the order in which they are received. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *NIAC@cisa.dhs.gov* by 5:00 p.m. EDT on June 5, 2024. The NIAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Jonathan Dunn at *NIAC@cisa.dhs.gov* as soon as possible.

Comments: The council will consider public comments on issues as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials for potential discussions during the meeting will be available for review at *https://www.cisa.gov/niac* by June 4, 2024. Comments should be submitted by 5:00 p.m. EDT on June 5, 2024 and must be identified by Docket Number CISA–2024–0005. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Please follow the instructions for submitting written comments.
- *Email: NIAC@cisa.dhs.gov*. Include the Docket Number CISA–2024–0005 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to read the Privacy & Security Notice which is available via a link on the homepage of *www.regulations.gov*.

Docket: For access to the docket and comments received by the National Infrastructure Advisory Council, please go to *www.regulations.gov* and enter docket number CISA–2024–0005.

A public comment period will take place from 3:30 p.m. to 3:40 p.m. EDT. Speakers who wish to participate in the public comment period must email *NIAC@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Jonathan Dunn, 202–731–1020, *NIAC@cisa.dhs.gov*.

SUPPLEMENTARY INFORMATION: The NIAC is established under section 10 of E.O. 13231 issued on October 16, 2001, as amended and continued under the authority of E.O. 14109, dated September 29, 2023. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. ch. 10 (Pub. L. 117–286). The NIAC provides the President, through the Secretary of Homeland Security, advice on the security and resilience of the Nation's critical infrastructure sectors.

Agenda: The National Infrastructure Advisory Council will meet in an open session on Tuesday, June 11, 2024, from 2:00 p.m. to 5:00 p.m. EDT to discuss NIAC activities. The open session will include: (1) a keynote address on critical infrastructure security and resilience; (2) presentation of the Transformer Production Report; (3) Council deliberation and vote; (4) public comment period; (5) subcommittee updates and member discussion.

Dated: May 16, 2024.

Jonathan M. Dunn,

Designated Federal Officer, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–11159 Filed 5–20–24; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2024–0013]

Establishment of the Homeland Intelligence Advisory Board

AGENCY: Office of Intelligence and Analysis, Department of Homeland Security (DHS).

ACTION: Notice of the establishment.

SUMMARY: The Department of Homeland Security, through the Office of Intelligence and Analysis, is establishing the Homeland Intelligence Advisory Board (''the Board''). This Notice is not a solicitation for membership.

FOR FURTHER INFORMATION CONTACT: Steven Cash, Senior Advisor to the Under Secretary for Intelligence and Analysis, Office of I&A, U.S. Department of Homeland Security, 202–282–9855, email *HIAB@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Board is an advisory body that provides information, advice, and recommendations to the Under

Secretary for Intelligence and Analysis and the Counterterrorism Coordinator regarding the Department's role in intelligence-related activities and effective integration of the DHS Intelligence Enterprise. The Board will provide the Under Secretary an independent and balanced forum for debate and critical assessment of the Office of Intelligence and Analysis (I&A) and the Department's Intelligence Enterprise. The duties of the Board are solely advisory in nature and shall extend only to the submission of information, advice, and recommendations to the Under Secretary. In recognition of the sensitive nature of the subject matter involved, the Secretary exempted the Board from the Federal Advisory Committee Act.

The scope of the Board's activities may include, but need not be limited to, advice and recommendations from sector representatives regarding how the Department can facilitate multidirectional intelligence and information sharing; facilitate the identification of intelligence requirements and needs; facilitate access to I&A products, resources, and expertise; ensure operational adherence to principles of privacy and civil liberties; and, advocate for priorities across I&A, the DHS Intelligence Enterprise, and the federal government Intelligence Community in support of Homeland Security missions. The Secretary is establishing the Board pursuant to section 871(a) of the *Homeland Security Act of 2002.* In recognition of the sensitive nature of the subject matter involved, the Secretary hereby exempts the Board from The *Federal Advisory Committee Act* (FACA), 5 U.S.C. ch. 10. This notice is being provided in accordance with 6 U.S.C. 451(a).

Membership: The Under Secretary shall appoint up to forty (40) members to serve as Board Members and represent key sectors of the intelligence enterprise. Members will represent the following sectors: National or Homeland Security including Intelligence Collection and Information Sharing; Privacy and Civil Liberties; State, Local, Tribal, Territorial, and Private Sector (''SLTTP'') with Homeland Security responsibilities; Law; Law Enforcement; Legislative Activities; Academia and the Research Community; Owners and Operators of Critical Infrastructure or Resources; and Under Secretary selections. The Under Secretary shall Chair the Board and shall select a Co-Chair from among the members of the Board. The Under Secretary shall be a non-voting member of the Board. The Chair shall lead Board meetings and provide strategic leadership and direction for the Board discussions and activities. The term of office of the Co-Chair shall be two years. The Co-Chair may be reappointed by the Under Secretary, not to exceed two additional terms. If the Co-Chair is not able to serve for an entire term, the Under Secretary shall make a new appointment.

The Board Members shall be appointed by and serve at the pleasure of the Under Secretary. Members shall serve a term of five years, with the opportunity to be reappointed for one additional term.

In order to fully leverage broad-ranging experience and education, the Board must be diverse with regard to professional and technical expertise. DHS is committed to pursuing opportunities, consistent with applicable law, to compose a board that reflects the diversity of the United States.

Appointments shall be made without regard to political affiliation. In the event the Board is terminated, all appointments to the Board shall terminate automatically.

Duration: The Secretary may extend the Board every two years as the Secretary deems appropriate, pursuant to 6 U.S.C. 451.

Michael J. Miron,

Committee Management Officer, Department of Homeland Security.

[FR Doc. 2024–10869 Filed 5–17–24; 4:15 pm]

BILLING CODE 9110–9N–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0012]

Agency Information Collection Activities: Infrastructure Visualization Platform (IVP) Pre-Collection Questionnaire

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; new collection request of information, 1670–NEW.

SUMMARY: DHS CISA Infrastructure Security Division (ISD), Resilience Services Branch (RSB) submits the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until July 22, 2024.

ADDRESSES: You may submit comments, identified by docket number CISA–2024–0012, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

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

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Jonathan Moaikel, *jonathan.moaikel.cisa.dhs.gov,* 202–251–5276.

SUPPLEMENTARY INFORMATION: CISA's ISD supports the homeland security mission of critical infrastructure security. As part of this mission, CISA Protective Security Advisors (PSAs) conduct various critical infrastructure security assessments for various stakeholders including facility owners and operators; federal, state, and local law enforcement officials; emergency response personnel; and others.

One type of assessment PSAs can perform is an Infrastructure Visualization Platform (IVP). IVPs integrate high-resolution, interactive visual data as well as additional assessment information. For a PSA to conduct an assessment, each stakeholder must complete an IVP Pre-Collection Questionnaire. When the form is completed and submitted, the IVP team can better plan for the assessment by reviewing locations designated as Areas of Emphasis (AOEs) to ensure those areas receive an assessment, to know who appropriate points of contact are (stakeholder

requesting and escort who will be with the team during the collect), and to address special considerations prior to showing up for the collect.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title of Collection: Infrastructure Visualization Platform (IVP) Pre-Collection Questionnaire.

OMB Control Number: 1670–NEW.

Frequency: Annually.

Affected Public: State, local, Tribal, and Territorial Governments and Private Sector Individuals.

Number of Respondents: 120.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 60 hours.

Annualized Respondent Cost: $2,527.00.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $2,576.00.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2024–11133 Filed 5–20–24; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0028, abstracted below, that we will submit to OMB for extension in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden for TSA to verify the employment status and eligibility for participation in advanced self-defense training provided by TSA.

DATES: Send your comments by July 22, 2024.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Nicole Raymond at the above address, or by telephone (571) 227–2526.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0028, Flight Crew Self-Defense Training—Registration and Evaluation. TSA is seeking an extension of the ICR, currently approved under OMB control number 1652–0028, to continue compliance with a statutory mandate. Under 49 U.S.C. 44918(b), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

TSA must collect specific information to provide the program to eligible participants, as well as assess training quality. This information includes limited biographical information from flight and cabin crew members to confirm their eligibility to participate in this training. TSA uses the information to confirm the eligibility of the participant by contacting the participant's employer.

TSA collects the following information at the time of registration online: name of the crew member, airline affiliation, position, crew member airline identification (ID) number, crew member contact information (home mailing address, home telephone number and/or email address), and the city and state of the TSA Law Enforcement/Federal Air Marshals Service field office where the course will be taken. Upon attending class, crew members are asked to show two forms of ID to verify their identity against registration records and to sign the class attendance roster. Two forms of identification includes an airline ID and a Drivers License or Passport.

In addition, TSA requests each crew member to complete an Injury Waiver Form during the registration process, or before the training is conducted. The Injury Waiver Form requests the employee's airline, airline ID number, signature, and date, and is intended to limit any liability to TSA or its facilities should a crew member become injured during the training.

TSA also asks trainees to complete a voluntary evaluation of the training upon completion of the course. Participants may assess the training quality and provide anonymous and voluntary comments by clicking on the electronic feedback link located on the registration site. TSA estimates the

number of annual respondents is 795. The respondents are the 300 airlines providing the class rosters, plus the 495 indiviual crew members providing information directly to TSA for the FAM field office classes, totaling 795. The estimated annual burden is 61.17 hours. TSA estimates 11,000 air crew members will undergo self defense training each year. Of these, 95.5% (10,505) of trainings will occur at airline training centers, and 4.5% (495) will occur at FAM field offices. It will take 300 classes to train crew members at airline training centers, and it will take two (2) minutes for the airline to create each class roster. This amounts to 10 hours (300 classes × 2 minutes). TSA estimates the FAMS field office training online registration requires five (5) minutes and the injury waiver and class roster sign-in process requires one (1) minute per crew member. This amounts to 49.5 hours [(495 crew members × 6 minutes)]. Although using the course feedback tab is strictly voluntary, TSA estimates ten (10) minutes per crew member for those who complete the evaluation, and 10 crew members will complete the evaluation each year for a total of 1.67 hours (10 crew members × 10 minutes) TSA estimates the total annual hours for this information collection to be 61.17 (10 + 49.5 + 1.67) hours.

Dated: May 15, 2024.

Nicole Raymond,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–11097 Filed 5–20–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7092–N–28]

Privacy Act of 1974; System of Records

AGENCY: Office of Departmental Equal Employment Opportunity, HUD.

ACTION: Notice of a rescindment of a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), the Office of Department Equal Employment Opportunity, is issuing a public notice of its intent to rescind the Equal Employment Opportunity Monitoring and Analysis System (EEOMAS) because it duplicates EEOC/GOVT–1, a Government Wide SORN that takes precedence.

DATES: Comments will be accepted on or before June 20, 2024. This proposed action will be effective immediately upon publication.

ADDRESSES: You may submit comments, identified by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: LaDonne White, Chief Privacy Officer, 451 Seventh Street SW, Room 10139, Washington, DC 20410; telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: Equal Employment Opportunity Monitoring and Analysis System (EEOMAS) is the management information system used to monitor and evaluate the Department's equal employment and affirmative employment efforts and accomplishments. It contains selected personal information on each HUD employee which is essential in conducting demographic analyses between the work force and the civilian labor force and concentration analyses of the dispersion of employees within the work force. The EEOMAS system of records continues to operate and will leverage the government wide SORN, EEOC/GOVT–1.

SYSTEM NAME AND NUMBER:

Equal Employment Opportunity Monitoring and Analysis System (EEOMAS). HUD/ODEEO/01.

HISTORY:

64 FR 33901(June 24, 1999), Agency Docket No. FR–4456–N–03.

Ladonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2024–11112 Filed 5–20–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7082–N–02]

60-Day Notice of Proposed Information Collection: State Community Development Block Grant (CDBG) Program; OMB Control No.: 2506–0085

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 22, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3577 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Peterson, Director, States and Small Cities Division, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Robert Peterson at *Robert.C.Peterson@hud.gov* or telephone 202–402–4211. This is not a toll-free

number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: State Community Development Block Grant (CDBG) Program.

OMB Approval Number: 2506–0085.

Type of Request: Extension of currently approved collection.

Form Number: HUD–40108.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended (HCDA), requires grant recipients that receive CDBG funding to retain records necessary to document compliance with statutory and regulatory requirements on an on-going basis. The statute also requires [section 104(e)(2)] that HUD conduct an annual review to determine whether states have distributed funds to units of general local government in a timely manner. Additionally, section 916 of the Cranston-Gonzalez National Affordable Housing Act of 1990, prescribes a consultation with representatives of the interests of the residents of the colonias.

Respondents: This information collection applies to 50 State CDBG Grantees (49 states and Puerto Rico but not Hawaii).

Information collection	Number of respondents	Frequency of response	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Recordkeeping:						
States	50	1	126.00	6,300	$41.67	$262,521.00
Localities	3,500	1	26.13	91,455	41.67	3,810,929.85
Timely Distribution	50	1	2.60	130	41.67	5,417.10
Colonias Consultation	54	1	4.00	216	41.67	9,000.72
Total				98,101		4,087,868.67

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.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024–11109 Filed 5–20–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7082–N–04]

60-Day Notice of Proposed Information Collection: Housing Opportunities for Persons With AIDS (HOPWA) Program, OMB Control No.: 2506–0133

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 22, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3577 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Claire Donze, Senior Program Financial Operations Specialist, Office of HIV/AIDS Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Claire Donze at *Claire.L.Donze@hud.gov* or telephone 202–402–2365. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Claire Donze.

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: Housing Opportunities for Persons With AIDS (HOPWA): Grant Reporting, Recordkeeping, and Closeout.

OMB Approval Number: 2506–0133.

Type of Request: Revision of currently approved collection.

Form Number: HUD–4153, HUD–4154, HUD–4155, SF–425.

Description of the need for the information and proposed use:

The current Paperwork Reduction Act approval under OMB Control No. 2506–0133 covers reporting, record keeping, and application requirements for both the HOPWA formula and competitive grant programs. The competitive grant program includes new competitive grants and renewal/replacement grants. This revision applies to reporting and closeout requirements for all HOPWA grantees.

This submission requests to add additional data elements to form HUD–4155, remove forms that are no longer needed, remove pre-award information that will be covered with a child submission through the HUD generic information collection request under OMB Control Number 2501–0044, adjust language in form HUD–4154, update form HUD–4153 to reflect published Notices of Funding Opportunity (NOFOs), and add grant closeout to the paperwork collection package with a new HOPWA grant closeout form.

The addition of information collection for grant closeout will apply to all HOPWA grantees. The use of a new HOPWA grant closeout certification form, the SF425, and all other relevant reports to the grant project will ensure grantees are able to close active grants when the project is complete by determining that all applicable administrative actions and all required work of the grant have been completed by the grantee.

HUD systematically reviews and conducts data analysis in order to prepare national and individual grantee performance profiles that are not only used to measure program performance against benchmark goals and objectives, but also to communicate the program's achievement and contributions towards Departmental strategic goals. HUD plans to continue using the data elements in this submission for these purposes.

Respondents: HOPWA competitive and renewal grant applicants, and all HOPWA formula, competitive, and renewal grantees.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Consolidated APR/CAPER data elements (HUD–4155) ...	258.00	1.00	258.00	40.00	10,320.00	$28.73	$296,493.60
HUD–4154, HIV Housing Care Continuum Model Report (new competitive SPNS grant only)	40.00	1.00	40.00	20.00	800.00	28.73	22,984.00
HUD–4153, SPNS Grant Model Report (new competitive SPNS grant only)	40.00	1.00	40.00	40.00	1,600.00	28.73	45,968.00
Recordkeeping for Competitive, PSH, and Formula Grantees	258.00	1.00	258.00	60.00	1,5480.00	28.73	444,740.40
Grant Amendments (budget change, extension, or early termination)	30.00	1.00	30.00	6.00	180.00	28.73	5,171.40
Grant Closeout (closeout certification, SF425, and all financial, performance, and other reports required as a condition of the grant)	258.00	1.00	200.00	12.00	2,400.00	28.73	68,952.00
Total	884.00	.....	826.00	.....	30,780.00	.....	$884,309.40

HOPWA grantees and applicants may be required to respond to more than one piece of information collection. All annualized costs reflect staff time spent on tasks in the table. The hourly rate of $28.73 is based on a GS–9 for Rest of United States. 10,320 hours * $28.73 = $296,493.

The estimated costs under this OMB approval number in this request is lower than previous approval. This accounts for the removal of forms HUD–40110–C/D, and removal of pre-award information. Updates on the chart also include the addition of grant closeout,

increases for a larger number of new competitive SPNS grants, and higher hourly wage.

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. 3507.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024–11110 Filed 5–20–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23RL00UUW0400]

Agency Information Collection Activities; Cultural Ecosystem Services Mapping Survey

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 22, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW Cultural Ecosystem Services Mapping Survey in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Darius Semmens by email at *dsemmens@usgs.gov,* or by telephone at 303–236–1420. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1) and 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 the agency might 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. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The Salmon River Basin in central Idaho contains minerals that are in high demand due to the energy transition, which is increasing development pressure. The basin is also renowned for its recreational activities, notably those related to its wild and scenic rivers, and its cultural importance for subsistence hunting and fishing. These and other values important in the Salmon River Basin (SRB) are commonly characterized as cultural ecosystem services—the non-material benefits that people obtain from nature. They are culturally very important, but their value is not easily or appropriately monetized and as a result they are rarely accounted for quantitatively in environmental assessments. The overarching goal of the project is to develop spatial and non-spatial information about social values for these ecosystem services so that they can be considered in the context of mineral development proposals, environmental impact assessments, and other resource management decisions.

Title of Collection: Cultural Ecosystem Services Mapping Survey.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Households within the Salmon River Basin (n=2400), summer river users on the Main Salmon (n=800), and tourists to the region (n=800).

Total Estimated Number of Annual Respondents: 2,000.

Total Estimated Number of Annual Responses: 2,000.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 500 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

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 PRA (44 U.S.C. 3501 *et seq.*).

Lara E. Douglas,

Center Director, Rocky Mountain Region, USGS.

[FR Doc. 2024–11066 Filed 5–20–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037948; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), San Diego State University (SDSU) intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after June 20, 2024.

ADDRESSES: Jaime Lennox, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182, telephone (619) 594–4575, email *jlennox@sdsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of SDSU, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 266 cultural items have been requested for repatriation. The 266 objects of cultural patrimony are 17 lithic fragments, two unidentified stone tools, four mano fragments, three projectile points, 208 shell beads, one glass bead, 28 ceramic sherds, two metate fragments, and one stone pendant. From June 2004 through March 2022, cultural items were removed from the Nathan Harrison homestead site in northern San Diego County, CA as part of annual archaeological excavations overseen by SDSU; upon removal, all items were held under the stewardship of the SDSU Historical Archaeology and Maya Research Laboratory. The Nathan Harrison homestead site consists of remnants of a stone cabin constructed ca.1865 and associated artifact deposits consisting predominantly of dateable materials ranging from ca.1865 to ca.1920.

Determinations

SDSU has determined that:

- The 266 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the La Jolla Band of Luiseno Indians, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; and the Rincon Band of Luiseno Mission Indians of Rincon Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received, SDSU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. SDSU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11094 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037942; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kent State University, Department of Anthropology, Kent, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Kent State University, Department of Anthropology, has completed an inventory of human remains and associated funerary objects and has determined that there is cultural affiliation between the human remains and associated funerary objects and the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 20, 2024.

ADDRESSES: Richard Meindl Ph.D., Kent State University, P.O. Box 5190 Lowry Hall, Kent State University, Kent, OH 44240, telephone (330)–672–4363, email *rmeindl@kent.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Kent State University, Department of Anthropology, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing at least 16 individuals have been reasonably identified. The 167 associated funerary objects are two painted turtle shells, shell beads, ceramic vessel sherds, fragments of ground stone tools, chert fragments, and animal bones (some worked into tools, and some not worked). The human remains and associated funerary objects were removed from the Kramer Village Site (33R033) in Ross County, OH, during the field season from 1984–1986. Many of the human remains uncovered are fragmentary, and determining age or sex of such individuals was not possible. Since 1992, all burials and their

associated funerary objects were curated with the utmost care and placed in a secure area with access granted only to those working on the repatriation effort. The objects were found either with, or in close proximity to, human remains. Several objects were included in this inventory although they were collected on the surface of the ground requiring no excavation but are believed to be of cultural significance.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Kent State University has determined that:

- The human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.
- The 167 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Saginaw Chippewa Indian Tribe of Michigan; and the Shawnee Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received, the Kent State University, Department of Anthropology, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Kent State University Department of Anthropology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11090 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037956; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Boston Children's Museum, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Boston Children's Museum intends to repatriate certain cultural items that meet the definition of sacred objects or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after June 20, 2024.

ADDRESSES: Melissa Higgins, Boston Children's Museum, 308 Congress Street, Boston, MA 02210, telephone (617) 986–3692, email *higgins@bostonchildrensmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Boston Children's Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 106 cultural items have been requested for repatriation. The 29 sacred objects are masks, rattles, and a cane. The 77 objects of cultural patrimony are games, dolls, household objects, decorative ornamentations and beadwork, pouches, moccasins, baskets, bottles, and instruments. All of these items have cultural associations with nations that are a part of Onondaga nation, including Seneca, Onondaga, Cayuga, Iroquois, Mohawk, and Oneida. No potentially hazardous substances are known to have been used to treat any of these items.

Determinations

Boston Children's Museum has determined that:

- The 29 sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- The 77 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and Onondaga Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received, Boston Children's Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Boston Children's Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian

organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11096 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037940; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Thomas Burke Memorial Washington State Museum (Burke Museum) intends to repatriate a certain cultural item that meets the definition of a sacred object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after June 20, 2024.

ADDRESSES: Sven Haakanson Jr., Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 543–3210, email *svenh@uw.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Burke Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one sacred object is a wooden dance rattle created by Robert Collier (Burke Accn. 2097, Cat no. 8675). On April 2, 1925, Leslie Spier and E.G. Spier collected the rattle from Jamestown, Clallam County, WA. Recorded provenience information identifies Robert Collier as the creator of the rattle, identified as a Bird Rattle. According to information from the Jamestown S'Klallam Tribe, Robert Collier was born in the late 1870s and recorded on multiple census rolls as S'Klallam. He is descended from S'Klallam parents who lived in Jamestown, and Collier later lived with his family in Washington Harbor (sxʷčkʷíyəŋ). Collier was sought as a principal informant for Erna Gunther's ethnography fieldwork in the mid-1920s, resulting in the published work, *Klallam Ethnography.* Collier married twice (Abby Collier and Martha Dick Collier) and has descendants represented in the Jamestown S'Klallam Tribal Families: Hall, Sampson, Lombardi, Collier, Wheeler, Gentry, Adams, and Russell. The Jamestown S'Klallam Tribe has identified this Bird Rattle as a sacred object that is still used in traditional ceremonial practices. The Bird Rattle was tested for pesticide contamination and the results indicated that there is likely hazardous substances present. The Burke Museum provided recommendations for safe handling.

Determinations

The Burke Museum has determined that:

- The one sacred object described in this notice is a specific ceremonial object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- There is a reasonable connection between the cultural item described in this notice and the Jamestown S'Klallam Tribe.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received, the Burke Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Burke Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11088 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037947; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of the Interior, Bureau of Land Management, Battle Mountain District, Battle Mountain, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Bureau of Land Management, Battle Mountain District (BLM) intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after June 20, 2024. If no claim for disposition is received by May 21, 2025, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Jon D. Sherve, Field Manager, Bureau of Land Management, Battle Mountain District, 50 Bastian Road, Battle Mountain, NV 89820, telephone (775) 635–4056, email *jsherve@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BLM, and additional information on the human remains or cultural items in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. The remains were reported in Reese River Valley in February 1976 on lands managed by the BLM in Lander County, Nevada. The Lander County Sheriff's Office was notified of the remains. The human remains were fully exhumed by the BLM and the Yomba Shoshone Tribe on July 20, 2009, and the remains were sent to the University of Nevada, Reno (UNR) on June 22, 2010. The remains are still housed at UNR.

Determinations

The BLM has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The Yomba Shoshone Tribe of the Yomba Reservation, Nevada has priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by May 21, 2025, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition. Disposition of the human remains in this notice may occur on or after June 20, 2024. If competing claims for disposition are received, the BLM must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The BLM is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11093 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037943; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Great Basin National Park, Baker, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Great Basin National Park (GRBA) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after June 20, 2024.

ADDRESSES: Ashley Adams, Superintendent, Great Basin National Park, 100 Great Basin National Park, Baker, NV 89311, telephone (775) 234–7502, email *ashley_adams@nps.com.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, GRBA, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records.

Abstract of Information Available

Based on the information available, human remains representing, at least, 11 individuals have been reasonably identified. No associated funerary objects are present. Archeological excavations were conducted in 1937, 1938, and 1963 at the Lehman Caves Natural Entrance site located in White Pine County, NV. Human remains representing at least 21 individuals were reported in a Notice of Inventory Completion published in the **Federal Register** on April 22, 1998 (63 FR 19940–19942) and were repatriated in 1998 by GRBA. A 2018 review of faunal materials reasonably identified additional fragmentary human remains representing, at least, 11 individuals. The following types of information were used to determine cultural affiliation: anthropological, archeological, geographic, historical, oral tradition, and Native American traditional knowledge. These human remains have not been treated with hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

GRBA has determined that:

- The human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); and the Skull Valley Band of Goshute Indians of Utah.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received, GRBA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. GRBA is responsible for sending a copy of this notice to the Indian Tribes and Native

Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11091 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037950; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: HistoryMiami Museum, Miami, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), HistoryMiami Museum (HM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 20, 2024.

ADDRESSES: Natalia Crujeiras, HistoryMiami Museum, 101 West Flagler Street, Miami, FL 33130, telephone (305) 375–1492, email *NCrujeiras@historymiami.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of HM and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 188 individuals have been reasonably identified. The 1,105 associated funerary objects include pottery, shell, shell beads, bone, bone tools and beads, faunal bone, and lithic material. The funerary materials in this inventory include materials excavated throughout south Florida. As the repository for archaeological materials found in Miami-Dade County, items were acquired directly from archeologists or through general museum donation. The materials are culturally affiliated to the Tequesta people, through the Seminole Tribe of Florida. No known hazardous material exists within the collection.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

HM has determined that:

- The human remains described in this notice represent the physical remains of 188 individuals of Native American ancestry.
- The approximately 1,105 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Seminole Tribe of Florida.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received HM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. HistoryMiami is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11095 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037945; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Mercyhurst University, Erie, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Mercyhurst University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after June 20, 2024.

ADDRESSES: Anne Marjenin, Mercyhurst University, 501 E 38th Street, Erie, PA 16546, telephone (814) 824–2012, email *nagpra@mercyhurst.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Mercyhurst University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. On an unknown date, the individual (VM–091) identified as ''Comanche'' was removed from an unknown geographic location in Texas. On an unknown date, the individual was obtained by Raymond C. Vietzen (1907–1995). Vietzen, an avocational archaeologist, collector, and author,

established the Indian Ridge Museum in Elyria, Ohio, and the Archaeological Society of Ohio (formerly the Ohio Indian Relic Collectors Society). The Indian Ridge Museum, founded in the 1930s, served as Vietzen's laboratory and repository, and it remained in operation until the mid-1990s. After Vietzen's death, the facility fell into disrepair, and most of the items he had acquired and housed at the museum were sold. In 1998, the Ohio Historical Society (presently the Ohio History Connection) removed ancestral human remains and some of the remaining items from the facility and temporarily housed them at the Ohio Historical Society. In October of 2003, these remains were transferred from the Ohio Historical Society to Mercyhurst College (presently Mercyhurst University).

While there is no record regarding potentially hazardous substances having been used to treat the human remains, unidentified adhesives are present. It is unknown when the adhesives were applied. The human remains may have been treated with an unidentified preservative coating, consolidant, or sealant. It is unknown when this unidentified substance may have been applied.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

Mercyhurst University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Comanche Nation, Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received, Mercyhurst University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Mercyhurst University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11092 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037941; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arizona State Museum, University of Arizona, Tucson, AZ, and Arizona Capitol Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Arizona State Museum, University of Arizona (ASM) and the Arizona Capitol Museum have completed an inventory of human remains and have determined that there is a cultural affiliation between the human remains and Indian Tribes in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after June 20, 2024.

ADDRESSES: Cristin Lucas, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–0320, email *lucasc@arizona.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the ASM and Arizona Capitol Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. On an indeterminate date circa 1976, human remains represented by cranial elements were brought to the Arizona State Library in Phoenix, AZ under unknown circumstances. The Arizona State Library retained the human remains until 1982 when they were accessioned into collections at the Arizona Capitol Museum after its opening in 1981. In 2023, the ASM accepted temporary custody of the remains to facilitate repatriation on behalf of the Arizona Capitol Museum. No known provenience is available for the human remains; however, it is reasonably presumed the individuals originated from an Arizona location based on the acquisition history. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The ASM and Arizona Capitol Museum have determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Ak-Chin Indian Community; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan

Southern Paiute Tribe of Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 20, 2024. If competing requests for repatriation are received, the ASM and Arizona Capitol Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The ASM and Arizona Capitol Museum are responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–11089 Filed 5–20–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1374–1376 (Review)]

Citric Acid and Certain Citrate Salts From Belgium, Colombia, and Thailand; Cancellation of Hearing for Full Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

DATES: May 13, 2024.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch ((202) 205–2387), 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 (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 15, 2023, the Commission established a schedule for the conduct of the full five-year reviews (88 FR 81100, November 21, 2023). On May 8, 2024, counsel for Archer-Daniels-Midland Company (''ADM''), Cargill, Incorporated (''Cargill''), and Primary Products Ingredients Americas LLC (''Primient'') (collectively, the ''domestic interested parties'') filed a request to appear at the hearing. No other party submitted a request to appear at the hearing. On May 9, 2024, counsel for the domestic interested parties filed a request that the Commission cancel the scheduled hearing for these reviews given the lack of respondent interested party participation. Counsel indicated a willingness to submit written responses to any Commission questions. Consequently, the public hearing in connection with these reviews, scheduled to begin at 9:30 a.m. on Thursday, May 16, 2024, is cancelled. Parties to these reviews should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on May 28, 2024.

For further information concerning these reviews see the Commission's notice cited above and 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).

Authority: These reviews are 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: May 14, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–10929 Filed 5–20–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 002–2024]

Privacy Act of 1974; Systems of Records

AGENCY: Executive Office for United States Attorneys, United States Department of Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Executive Office for United States Attorneys (hereinafter, EOUSA) and the Office of Justice Programs (hereinafter, OJP), components within the United States Department of Justice (DOJ or Department), propose to develop a new system of records notice titled Child Pornography Victims Reserve Records, JUSTICE/USA–020. EOUSA and OJP propose to establish this system of records to administer the Child Pornography Victims Reserve, as required under The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by June 20, 2024.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 2 Constitution Square, 145 N Street Northeast, Suite 8W.300, Washington, District of Columbia, 20530; by facsimile at 202–307–0693; or by email at *privacy@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Karen Rolley, Attorney-Advisor, Executive Office for United States Attorneys, 175 N Street NE, Office of Legal Programs, Washington, DC 20530, *karen.rolley@usdoj.gov,* 202–252–5866.

SUPPLEMENTARY INFORMATION: Under Federal law, victims of child pornography offenses are entitled to full

and timely restitution from defendants charged and convicted in Federal court, including restitution for losses caused by conduct such as the possession, receipt, viewing, transportation, and distribution of these images. Restitution is imposed upon an individual criminal defendant by a Federal court at the time of sentencing, and the obligation to pay restitution is part of the defendant's criminal sentence. The Federal Government bears the burden of proving that the defendant owes restitution to a victim, although a defendant can agree to pay restitution as part of a plea agreement.

The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (''AVAA'') created an alternative system to allow victims of trafficking in child pornography to obtain some measure of compensation (called ''defined monetary assistance'') without having to prove their losses. For this purpose, the AVAA established the Child Pornography Victims Reserve (''Reserve'') to provide defined monetary assistance to eligible individuals who are depicted in child pornography that is the basis for certain convictions under 18 U.S.C. chapter 110. Under the terms of the statute, victims of these types of child pornography offenses can choose whether to present their full restitution claims in court through prosecutors, as is currently done, or to obtain a one-time payment of defined monetary assistance. The determination regarding victim eligibility for the payment is made by the court. The Act provides that the ''Attorney General shall administer'' this Reserve; therefore, the Department will provide payment from the Reserve to a victim pursuant to a court order issued, upon receipt of the order and the requisite information from the claimant.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: May 15, 2024.

Peter Winn,

Chief Privacy and Civil Liberties Officer (Acting), United States Department of Justice.

JUSTICE/USA–020

SYSTEM NAME AND NUMBER:

Child Pornography Victims Reserve Records, JUSTICE/USA–020.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Executive Office for United States Attorneys, U.S. Department of Justice, 175 N St. NE, 4th Floor, Washington, DC 20530 and Microsoft, 1 Microsoft Way, Redmond, Washington 98052.

SYSTEM MANAGER(S):

Karen Rolley, Attorney-Advisor, Executive Office for United States Attorneys, 175 N Street NE, Office of Legal Programs, Washington, DC 20530, *karen.rolley@usdoj.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. 115–299.

PURPOSE(S) OF THE SYSTEM:

These records are collected or generated for the purpose of determining qualification of and/or compensation to claimants under the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who claim compensation, known as ''defined monetary assistance,'' under the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (hereinafter, ''claimants'') and claimants' authorized representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include claims filed by or on behalf of claimants seeking defined monetary assistance; documents submitted in support of the claims; and other records obtained or generated to adjudicate, process, and manage the claims.

RECORD SOURCE CATEGORIES:

Information maintained in the Reserve will originate from a number of sources including, but not limited to claimants, claimants' authorized representatives, criminal and civil case files separately documented pursuant to the Privacy Act of 1974, and Federal court rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

B. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

C. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

D. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

F. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (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 the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the Department 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.

I. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the Department and meeting related reporting requirements.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper claims and supporting documents will be scanned and input into, the online portal and stored within the secure platform, and all paper documents will be destroyed as soon as is feasible pursuant to the applicable records retention schedules. Prior to destruction, all paper records will be stored in a locked file cabinet in a secure location. Claims received and processed through the online portal will be stored exclusively within the secure platform.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Files and automated data are retrieved by the claim number, name of a claimant or claimant's authorized representative, or case file number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records retention schedule covering records related to the Reserve is currently under development. Until a records retention schedule is approved by the National Archives and Records Administration, records related to the Reserve will be retained for the purpose of processing new claims that may be related to existing records. Once the records retention schedule is complete, records exceeding the approved schedule will be destroyed.

Paper claims and supporting documents will be destroyed using a secured shredding process.

Automated data is retained in its most current form only, however, and as information is updated, outdated information is deleted.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

This system meets DOJ requirements for authorization to operate per DOJ Order 0904, Cybersecurity Program. Specifically, information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy.

Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data by a valid user identification, password, and/or multifactor authentication.

Paper claims and supporting documents will be digitized immediately upon receipt to ensure auditability of access and use, and paper records will be destroyed as soon as is feasible pursuant to the applicable records retention schedule to prevent misuse of paper records.

RECORD ACCESS PROCEDURES:

All requests for access to records pursuant to the Privacy Act must be in writing and should be addressed to the FOIA Public Liaison, FOIA/Privacy Staff, Executive Office for United States Attorneys, U.S. Department of Justice, 175 N St. NE, Suite 5.400, Washington, DC 20530 or online at *https://eousafoia.usdoj.gov/*. For written requests, the envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website at *https://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16 subpart D, ''Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the ''EXEMPTIONS PROMULGATED FOR THE SYSTEM'' paragraph, below. An individual who is the subject of a record in this system of records may contest or, if appropriate, seek to amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2024–11055 Filed 5–20–24; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW1]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New; Juvenile Facility Census Program (JFCP)

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The National Institute of Justice, Office of Justice Programs, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 22, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Benjamin Adams, Supervisory Social Science Analyst, National Institute of Justice, 810 Seventh Street NW, Washington, DC 20531 (email: *benjamin.adams@usdoj.gov;* telephone: 202–616–3687).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Juvenile Justice and Delinquency Prevention, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: This request for clearance of the Juvenile Facility Census Program (JFCP) will combine two previously, separately cleared data collections: the Census of Juveniles in Residential Placement (OMB # 1121–0218) and the Juvenile Residential Facility Census (OMB # 1121–0219). The Census of Juveniles in Residential Placement (CJRP), which is administered biennially, collects information from all secure and nonsecure residential placement facilities that house persons younger than age 21 who are held in a residential setting as a result of some contact with the juvenile justice system for an offense. This encompasses both status offenses and delinquency offenses, and includes youth who are either temporarily detained by the court or committed after adjudication for an offense. The CJRP collects information on the characteristics of the youth held for an offense, including offense and demographics, and information on their placement, including adjudication status and length of stay. The Juvenile Residential Facility Census (JRFC), which is administered biennially in the years the CJRP is not administered, collects information about how juvenile facilities operate, the services they provide, and staff training from all secure and nonsecure residential placement facilities that house persons younger than 21 who are held for an offense. The information gathered in these national collections will be used in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in juvenile residential facilities, and the general public via the OJP agency websites. The two data collections are being combined into a single clearance packet because they are closely related and designed to be complementary. They are drawn from the same frame, are administered to the same respondents with identical eligibility criteria, have the same reference day, and use the same mode of collection. The collection administrations are deliberately sequenced and scheduled for alternating years because of the complementary nature of the information and overlap in respondents. Additionally, each collections' imputation procedures rely upon information from the other collection, and for some longitudinal analyses, data from both collections are combined to produce published statistics.

Overview of this information collection:

1. *Type of Information Collection:* New.

2. *The Title of the Form/Collection:* Juvenile Facility Census Program (JFCP).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are CJ–14 (CJRP) and CJ–15 (JRFC). The applicable components within the Department of Justice are the National Institute of Justice and the Office of Juvenile Justice and Delinquency Prevention, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* State, local and tribal governments, individuals or households, and Private Sector-for or not for profit institutions. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total estimated respondents is 1,711 for each collection for each year.

It takes an average of 4 hours to complete the CJRP. The total burden for the CJRP is 6,844 hours. It takes an average of 2 hours to complete the JRFC. The total burden for the JRFC is 3,422 hours.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The average annual burden is 5,703 hours or 17,110 total hours for the 2025 CJRP, 2026 JRFC, and 2027 CJRP.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The estimated annual cost for CJRP and JRFC is $633,054 each. The estimated cost for both collections is $1,266,108 annually.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
2025 CJRP					
Data Collection	1,711	Annual	1,711	4	6,844
2026 JRFC					
Data Collection	1,711	Annual	1,711	2	3,422

TOTAL BURDEN HOURS—Continued

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
2027 CJRP					
Data Collection	1,711	Annual	1,711	4	6,844
Unduplicated Totals for 2025 and 2027 CJRP and 2026 JRFC.	*5,133*		*5,133*		*17,110*

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–11056 Filed 5–20–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Survey of Inmates in Local Jails

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Statistics, Department of Justice (DOJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until June 20, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, (email: *Todd.Minton@usdoj.gov;* telephone: 202–598–7226), Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The proposed information was published in the **Federal Register**, at 89 FR 18669–18670 on March 14, 2024, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received two comments. Responses to these comments will be included in the final clearance package submitted to OMB.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Since 1972, BJS has conducted the Survey of Inmates in Local Jails (SILJ, OMB Number 1121–0098) periodically to gather detailed information on individual characteristics of jail inmates. The purposes of this omnibus survey are to generate reliable, nationally-representative estimates of the characteristics of jail inmates in the United States, track changes in the characteristics of jail inmates over time, conduct studies of jail inmates on special topics, and identify policy-relevant issues related to crime and corrections. This national survey will profile jail inmates nationwide to determine trends in criminal history, substance abuse, mental health, and medical problems of jail inmates, and treatment they may have received for problems, gun use and crime, inmate misconduct, inmate admission fees, and programs and activities inmates participate in while confined in jail. The data are used by a variety of stakeholders, including the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics. No other collection series provides these data on the variety of topics that SILJ covers. The data will be collected through face-to-face personal interviews with the inmates using Computer-Assisted Personal Interviewing (CAPI) technology.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* Survey of Inmates in Local Jails (SILJ).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* County government and City government and jail inmates age 18 or older that are held in local (county and city) jails. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS will sample a maximum of 10,000 inmates from 600 local jails for a total of 15,602 hours. BJS will conduct initial jail outreach with up to 740 jails to participate at 15 minutes per facility for a total of 185 hours in order to gain consent from 600 facilities to participate

in the study. A maximum of 600 jails will be contacted for study logistics planning and roster coordination at 75 minutes per facility for a total of 750 hours. During data collection, jail staff will escort a maximum of 10,000 inmates to and from interview sites at 15 minutes per inmate for a total of 2,500 hours. Inmate consent and survey participation total 73 minutes per interview for a total of 12,167 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden is 15,602 annual hours. This comprises 3,435 hours of facility staff burden and 12,167 hours of respondent interviewing burden.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The estimated cost is $90,450.

2024 SILJ Estimated Annualized Respondent Cost and Hour Burden

Activity	Number of respondents	Frequency	Total annual response	Time per response (minutes)	Total annual burden (hours)
Facility Recruitment and Logistic					
Introduction and Facility Approval	740	1	740	15	185
Study Logistic Planning	600	1	600	45	450
National Study					
Staff time—Providing inmate roster	600	1	600	30	300
Staff time—Escorting inmates	10,000	1	10,000	15	2,500
Consent—Inmate recruitment	10,000	1	10,000	3	500
Interview—Participate in the SILJ	10,000	1	10,000	70	11,667
Total	31,940		31,940		15,602

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 16, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–11115 Filed 5–20–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0296]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Census of Medical Examiner and Coroner Offices (CMEC)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Justice Statistics, Department of Justice (DOJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 22, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matt Durose (email: *Matt.Durose@usdoj.gov*; telephone: 202–598–0295), Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Bureau of Justice Statistics (BJS) 2023 Census of Medical Examiner and Coroner Offices (CMEC) will provide comprehensive statistics regarding the organizational structure, operations, policies and procedures, finances, and resources of the approximately 2,300 medical examiner and coroner (MEC) offices in 2023 nationwide. In the United States, medicolegal death investigations are provided by MEC offices whose purpose is to determine the cause and manner of death. As such, these offices are valuable, unique sources of information to many stakeholders, including the federal government, local law enforcement, the court system, the public health community, and families. The 2023 CMEC will generate an enumeration of the number and type of MEC offices operating in the United States in 2023, staff at these offices, budget and capital resources, workload, policies and procedures regarding casework, specialized death investigations, records and evidence retention, resources, and operations. The 2023 CMEC will be the third administration of the survey since 2004. To provide more comprehensive statistics on the nation's medicolegal death investigations outside of the traditional MEC offices, the 2023 CMEC

will also include the approximately 700 justices of the peace in Texas that make cause and manner of death determinations but were out of scope for the 2004 and 2018 CMECs. The 2023 CMEC survey was assessed by a panel of practitioners and subject matter experts and revised to ensure content is up-to-date and relevant to the medicolegal death investigation system today. The survey has also been revised to improve clarity and ease of answering questions. The 2023 CMEC will extend the national understanding of medicolegal death investigations and complement BJS's data collections involving publicly funded forensic crime laboratories and law enforcement core statistics.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with changes, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* 2023 Census of Medical Examiner and Coroner Offices (CMEC)

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CMEC–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected public are state and local government agencies. The 2023 CMEC is revised from the 2018 CMEC. BJS plans to field the 2023 CMEC from September 2024 through July 2025. Respondents will be the staff at MEC offices and Texas justices of the peace. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* A projected 3,000 respondents (including 2,300 MEC offices and 700 justices of the peace in Texas) will take an average of 90 minutes (1.5 hours) each to complete form CMEC–1, including time to research or find information not readily available. In addition, an estimated 1,500 respondents will be contacted for data quality follow-up at 15 minutes (.25 hours) per respondent.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total burden hours for this collection is 4,875.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $1,301,727.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Survey	3,000	1	3,000	90 min (1.5 hrs.)	4,500
Data Quality Follow-Up	1,500	1	1,500	15 min (.25 hrs.)	375
Unduplicated Totals	*3,000*		*3,000*		*4,875*

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 16, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–11114 Filed 5–20–24; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold two additional meetings, by video conference, of the Humanities Panel, a Federal advisory committee, in May 2024, and two meetings during June 2024. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: May 20, 2024

This video meeting will discuss applications for the Dynamic Language Infrastructure—Documenting Endangered Languages Fellowships grant program, submitted to the Division of Preservation and Access.

2. Date: May 22, 2024

This video meeting will discuss applications on the topics of Democracy, Governance, and Trust, for the Trans-Atlantic Partnership grant program, submitted to the Division of Research Programs.

3. Date: June 25, 2024

This video meeting will discuss applications on the topics of History, Philosophy, and the Social Sciences, for the Fellowships grant program, submitted to the Division of Research Programs.

4. Date: June 26, 2024

This video meeting will discuss applications on the topics of Literature and the Arts, for the Fellowships grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of

Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: May 16, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–11144 Filed 5–20–24; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0004]

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on May 7, 2024, regarding a meeting notice of the Advisory Committee on the Medical Uses of Isotopes. This action is necessary to correct a Microsoft Teams meeting link.

DATES: The correction takes effect on May 21, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0004 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–2024–0004. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: L. Armstead, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1650; email: *Lillian.Armstead@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** (FR) on May 7, 2024, in FR Doc. 2024–09901, on page 38198, in the Webinar information table, the Microsoft Teams link is incorrect. The correct Microsoft Teams link is as follows:

Link: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2Q4YzdhMjMtYzdmYS00MjdlLWFkMWMtOTliYWM5NDQ1MmQz%40thread.v2/0?context=%7b%22Tid%22%3a%22e8d01475-c3b5-436a-a065-5def4c64f52e%22%2c%22Oid%22%3a%22304f46bf-32c2-4e0f-912c-878db895e74a%22%7d*

Dated at Rockville, Maryland this 16th day of May, 2024.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–11100 Filed 5–20–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0224]

Information Collection: Identity, Credential, and Access Management System

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Identity, Credential, and Access Management System.''

DATES: Submit comments by June 20, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0224 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0224.
- *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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML23325A121 and ML23331A942. The supporting statement is available in ADAMS under Accession ML24114A196.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled ''Identity, Credential, and Access Management System.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 13, 2024, 89 FR 10105.

1. *The title of the information collection:* Identity, Credential, and Access Management System.
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Once, at the time access is requested.
6. *Who will be required or asked to respond:* External partners and members of the public that have a need to use NRC's secure web-based applications.
7. *The estimated number of annual responses:* 250.
8. *The estimated number of annual respondents:* 250.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 62.5.
10. *Abstract:* The NRC collects information from external partners and members of the public that have a need to use NRC's secure web-based applications. An applicant can request an external partner digital credential using NRC's web-based credential enrollment system. Once the applicant has obtained an NRC digital credential, it can be used to access select NRC secure web-based applications directly over the internet. The information collected is limited to identity information required for credential issuance processes and includes: phone numbers, email addresses, physical mailing addresses, facial photographs, photo identity documents, date of birth, and identity information from a U.S. driver's license, U.S. Government PIV card, U.S. Passport, U.S. Military ID card, U.S. Military dependent's ID card, Permanent Resident card, Alien Registration Receipt card (Form I–551) or Employment Authorization Document (Form I–766).

Dated: May 16, 2024.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–11141 Filed 5–20–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902100; NRC–2024–0078]

US SFR Owner, LLC.; Construction Permit Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing public notice each week for four consecutive weeks of receipt and availability of an application for a construction permit for a single unit reactor facility from US SFR Owner, LLC, a wholly owned subsidiary of TerraPower, LLC. The application for the construction permit was received on March 28, 2024, and a supplement to the application was submitted on May 2, 2024.

DATES: May 21, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0078 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0078. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mallecia Sutton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0673, email: *Mallecia.Sutton@nrc.gov.*

I. Discussion

On March 28, 2024, TerraPower, LLC (TerraPower), on behalf of US SFR Owner, LLC., a wholly owned subsidiary of TerraPower, filed an application for a construction permit for a single-unit power reactor facility located in Lincoln County, Wyoming, pursuant to section 103 of the Atomic Energy Act, as amended, and part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities.'' The single-unit facility is to be identified as Kemmerer Power Station, Unit 1 and would be based on

the TerraPower and General Electric-Hitachi Natrium reactor design which is a pool-type sodium fast reactor using metal fuel.

The application submitted on March 28, 2024, is available in ADAMS under Package Accession No. ML24088A059. Along with other documents, the ADAMS package includes the transmittal letter (ADAMS Accession No. ML24088A060), the preliminary safety analysis report (ADAMS Accession No. ML24088A065), and the environmental report (ADAMS Accession No. ML24088A072). The application was supplemented on May 2, 2024 (ADAMS Accession No. ML24123A242). The information submitted by the applicant includes certain administrative information submitted pursuant to 10 CFR 50.33, such as on financial qualifications; technical information submitted pursuant to 10 CFR 50.34; and the environmental report submitted pursuant to 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' These notices are being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

The NRC staff is currently undertaking its acceptance review of the application. If the application is accepted for docketing, a subsequent **Federal Register** notice will be issued that addresses the acceptability of the construction permit application for docketing and provisions for participation of the public in the permitting process.

Dated: May 13, 2024.

For the Nuclear Regulatory Commission.

Mallecia A. Sutton,

Senior Project Manager, Advanced Reactor Licensing Branch 1, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–10726 Filed 5–20–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0149]

Information Collection: Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities.''

DATES: Submit comments by June 20, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0149 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0149.
- *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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement is available in ADAMS under Accession Nos. ML24079A279.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR part 62, Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment

period on this information collection on December 21, 2023, 88 FR 88421.

1. *The title of the information collection:* 10 CFR part 62, Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities.

2. *OMB approval number:* 3150–0143.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Any low-level waste generator or governor of a State on behalf of generators seeking emergency access to an operating low-level waste disposal facility or an exemption from the requirements in part 62 of title 10 of the *Code of Federal Regulations* (10 CFR).

7. *The estimated number of annual responses:* 2.

8. *The estimated number of annual respondents:* 1.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 233.

10. *Abstract:* 10 CFR part 62 sets out the information that must be provided to the NRC by any low-level waste generator or governor of a State on behalf of generators seeking emergency access to an operating low-level waste disposal facility. The information is required to allow the NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security. 10 CFR part 62 also provides that the Commission may grant an exemption from the requirements in this part upon application of an interested person or upon its own initiative.

Dated: May 16, 2024.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–11085 Filed 5–20–24; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Renewal of an Existing Information Collection, (Generic Clearance for Improving Customer Experience), OMB Control No. 3206–0276

AGENCY: Office of Personnel Management (OPM).

ACTION: 30-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, OPM is proposing revisions to a currently approved information collection, OMB Control Number, 3206–0276: Generic Clearance for Improving Customer Service.

DATES: Comments are encouraged and will be accepted until June 20, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Office of Personnel Management'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to this information collection activities, please contact. Human Resources Solution, Office of Personnel Management, 1900 E. Street NW, Washington, DC 20415, Attention: Michelle Earley, or via electronic mail to *michelle.earley@opm.gov* or phone at 202–936–2034.

SUPPLEMENTARY INFORMATION: OPM, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the public with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Agency assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Agency's information collection requirements and provides the requested data in the desired format.

OPM is soliciting comments on the proposed information collection request (ICR) that is described below. OPM has revised language to conform with revisions to OMB Circular A–11 Section 280 regarding customer satisfaction surveys and updated the number of respondents and total burden hours included under this generic clearance for the following types of collections: customer interviews, focus groups, feedback surveys, user testing (rapid feedback), and user testing (deep dives). This ICR was previously published in the **Federal Register** on October 31, 2023, at 88 FR 74540 allowing for a 60-day public comment period. No comments were received for this ICR. The purpose of this notice is to allow an additional 30 days for public comments. The Agency is especially interested in public comment addressing the following issues: (1) whether this collection is necessary to the proper functions of the Agency; (2) whether this information be processed and used in a timely manner; (3) the accuracy of the burden estimate; (4) ways the Agency can enhance the quality, utility, and clarity of the information to be collected; and (5) ways the Agency can minimize the burden of this collection on the respondents, including through the use of information technology. Written comments received in response to this notice will be considered public records.

Analysis

Agency: Office of Personnel Management.

Title: OPM Customer Experience.

OMB Number: 3206–0276.

Affected Public: Individuals.

Number of Respondents: 4,013,750.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 1,006,125 hours.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–10937 Filed 5–20–24; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–211; MC2024–296 and CP2024–306; MC2024–298 and CP2024–305; MC2024–299 and CP2024–307; MC2024–300 and CP2024–308]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 23, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–211; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 34, Filed Under Seal; *Filing Acceptance Date:* May 15, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Philip T. Abraham; *Comments Due:* May 23, 2024.

2. *Docket No(s).:* MC2024–296 and CP2024–306; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 66 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 15, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 23, 2024.

3. *Docket No(s).:* MC2024–298 and CP2024–305; *Filing Title:* USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International Contract 8 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 15, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* May 23, 2024.

4. *Docket No(s).:* MC2024–299 and CP2024–307; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 260 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 15, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Philip T. Abraham; *Comments Due:* May 23, 2024.

5. *Docket No(s).:* MC2024–300 and CP2024–308; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 67 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 15, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Madison Lichtenstein; *Comments Due:* May 23, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–11106 Filed 5–20–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Tuesday, June 11, 2024, at 11:00 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

STATUS: Tuesday, June 11, 2024, at 11:00 a.m.—Closed.

MATTERS TO BE CONSIDERED:

Meeting of the Board of Governors

Tuesday, June 11, 2024, at 11:00 a.m. (Closed)

1. Strategic Matters
2. Administrative Matters

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2024–11191 Filed 5–17–24; 11:15 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* May 21, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 15, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International Contract 8 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–298 and CP2024–305.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2024–11107 Filed 5–20–24; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and Purpose of information collection: Statement Regarding Contributions and Support; OMB 3220–0099.

Under section 2 of the Railroad Retirement Act (45 U.S.C. 231a), dependency on an employee for one-half support at the time of the employee's death can affect (1) entitlement to a survivor annuity when the survivor is a parent of the deceased employee; (2) the amount of spouse and survivor annuities; and (3) the Tier II restored amount payable to a widow(er) whose annuity was reduced for receipt of an employee annuity, and who was dependent on the railroad employee in the year prior to the employee's death. One-half support may also negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One response is completed by each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 16039 on March 6, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement Regarding Contributions and Support.

OMB Control Number: 3220–0099.

Form(s) submitted: G–134.

Type of request: Revision of a currently approved collection of information.

Affected public: Individuals or Households.

Abstract: Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er).

Changes proposed: The RRB proposes a minor editorial change to Form G–134 to change the date under Section 1 ''General Instructions''.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–134:			
With Assistance	11	147	27
Without assistance	4	180	12
Total	15	.....	39

2. Title and purpose of information collection: Financial Disclosure Statement; OMB 3220–0127.

Under Section 10 of the Railroad Retirement Act and Section 2(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 231i), the RRB may recover overpayments of annuities, pensions, death benefits, unemployment benefits, and sickness benefits that were made erroneously. An overpayment may be waived if the beneficiary was not at fault in causing the overpayment and recovery would cause financial hardship. The regulations for the recovery and waiver of erroneous payments are contained in 20 CFR 255 and CFR 340.

The RRB utilizes Form DR–423, Financial Disclosure Statement, to obtain information about the overpaid beneficiary's income, debts, and expenses if that person indicates that (s)he cannot make restitution for the overpayment. The information is used to determine if the overpayment should be waived as wholly or partially uncollectible. If waiver is denied, the information is used to determine the size and frequency of installment payments. The beneficiary is made aware of the overpayment by letter and is offered a variety of methods for recovery. One response is requested of each respondent. Completion is voluntary. However, failure to provide the requested information may result in a denial of the waiver request.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 16039 on March 6, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Financial Disclosure Statement.

OMB Control Number: 3220–0127.

Form(s) submitted: DR–423.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under the Railroad Retirement and the Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

Changes proposed: The RRB proposes no changes to Form DR–423.

T*he burden estimate for the ICR is as follows:*

Form No.	Annual responses	Time (minutes)	Burden (hours)
DR–423	1,200	85	1,700

3. *Title and purpose of information collection:* Representative Payee Monitoring; OMB 3220–0151.

Under Section 12 of the Railroad Retirement Act (RRA) (45 U.S.C. 231k), the RRB may pay annuity benefits to a representative payee when an employee, spouse, or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7. The RRB utilizes the following forms to conduct its representative payee monitoring program.

Form G–99a, *Representative Payee Report,* is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. RRB Form G–99c, *Representative Payee Evaluation Report,* is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity.

Form G–106, *Statement of Care and Responsibility to Annuitant,* is used to solicit information about the representative payee's performance and the annuitant's well-being from the custodian of the annuitant. The form contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity.

Completion of the forms in this collection is required to retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 16039 on March 6, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Representative Payee Monitoring.

OMB Control Number: 3220–0151.

Forms submitted: G–99a, G–99c and G–106.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as representative payee. If the representative payee does not have custody of the beneficiary, the RRB will obtain the information from the custodian for evaluation. The collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

Changes proposed: The RRB proposes no changes to Form G–99a or Form G–99c. The RRB proposes the following changes to Form G–106 to Add a drop-down box 'Second Request' at the top of the form to when the RRB needs to follow-up with a Third-Party Custodian who did not respond to the initial request.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–99a (legal and all other, excepting parent for child)	5,300	18	1,590
G–99c (Parts I and II)	300	24	120
G–99c (Parts I, II, and III)	120	31	62
G–106	500	10	83
Total	6,220		1,855

4. Title and Purpose of information collection: Earnings Information Request; OMB 3220–0184 Under section 2 of the Railroad Retirement Act (45 U.S.C. 231a), an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR 230.

The RRB utilizes Form G–19–F, *Earnings Information Request,* to obtain earnings information that either had not been previously reported or erroneously reported by a beneficiary.

Currently the claimant is asked to enter the date they stopped working, if applicable. If a respondent fails to complete the form, the RRB may be unable to pay them benefits. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 16040 on March 6, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Earnings Information Request.

OMB Control Number: 3220–0184.

Form(s) submitted: G–19–F.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

Changes proposed: The RRB proposes no changes to the Form G–19–F.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–19–F	700	8	93

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Money at (312) 469–2591 or *Kennisha.Money@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–1275 or *Brian.Foster@rrb.gov.*

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.

Brian Foster,

Clearance Officer.

[FR Doc. 2024–11103 Filed 5–20–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100156; File No. SR–BOX–2023–20]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Adopt Rules To Govern FLEX Equity Options and a New Order Type To Trade FLEX Equity Options on the BOX Trading Floor

May 15, 2024.

On September 1, 2023, BOX Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Rules 5055 and 7605 which, among other applicable Exchange rules, will govern the trading of flexible exchange equity options (''FLEX Equity Options'') on the BOX Trading Floor, and make related changes to Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations). The proposed rule change was published for comment in the **Federal Register** on September 19, 2023.[3]

On September 27, 2023, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 12, 2023, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On December 15, 2023, the Commission published notice of Amendment No. 2 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.[8] On March 12, 2024, the Commission designated a longer period for Commission action on the proposed rule change.[9] On May 10, 2024, the Exchange filed Amendment No. 3, which replaced and superseded the proposed rule change, as modified by Amendment No. 2.[10] The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

I. Self-Regulatory Organization's Description of the Proposed Rule Change, as Modified by Amendment No. 3 [11]

The Exchange proposes to (1) adopt Rules 5055 and 7605 which will govern the trading of flexible exchange options (''FLEX Equity Options'') on BOX; and (2) make related changes to Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98380 (September 13, 2023), 88 FR 64482 (''Notice''). Comment on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-box-2023-20/srbox202320.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98568, 86 FR 68237 (October 3, 2023). The Commission designated December 18, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] On December 1, 2023, the Exchange submitted Amendment No. 1 to the proposed rule change. Amendment No. 1 was withdrawn on December 12, 2023. Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-box-2023-20/srbox202320-310739-809082.pdf* (''Amendment No. 2'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 99192, 88 FR 88437 (December 21, 2023) (Notice of Filing of Amendment No. 2 and Order Instituting Proceedings) (''OIP'').

[9] *See* Securities Exchange Act Release No. 99725, 89 FR 19386 (March 18, 2024) (Extension No. 2).

[10] In Amendment No. 3, the Exchange revised the proposal to better align the proposed rule change with the FLEX Equity Options rules of other exchanges, and to provide more specificity and clarification to the proposed rule change. Specifically, Amendment No. 3: (i) removed proposed Rule 5055(e)(2)(v)(a) regarding when a FLEX Equity Option order may be submitted; (ii) added rule language to proposed Rule 5055(b)(3) to clarify that FOO Orders may only be traded on the Trading Floor; (iii) modified proposed Rule 7605(c) to clarify who is applicable to apply to be a FLEX Market Maker; and (iv) made various clarifications to the rule text, including proposed Rule 7605(d)(4), and added additional clarifying changes to the description of and statutory basis for the proposed rule change. Amendment No. 3 is available on the Commission's website at: *https://www.sec.gov/comments/sr-box-2023-20/srbox202320-471351-1297514.pdf* (''Amendment No. 3'').

[11] This Section I and II reproduces Amendment No. 3, as filed by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) adopt Rules 5055 and 7605 which will govern the trading of flexible exchange options (''FLEX Equity Options'') on BOX; and (2) make related changes to Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations). The proposed rule change was published in the **Federal Register** on September 19, 2023 (the ''Original Filing'').[12] Subsequently, Amendment No. 1 was filed on December 1, 2023, Amendment No.1 was withdrawn on December 12, 2023, and Amendment No. 2, which amended and replaced the Original Filing in its entirety, was filed on December 12, 2023. On December 21, 2023, a notice of filing of Amendment No. 2 and order instituting proceedings to determine whether to approve or disapprove a proposed rule change, as modified by Amendment No. 2, was published in the **Federal Register**.[13] The Exchange is now proposing Amendment No. 3 to amend and replace Amendment No. 2 and the Original Filing in their entirety. This Amendment No. 3 is being filed to better align the proposed rule change with the rules of other exchanges and provide more specificity to the proposed rule change. In particular, Amendment No. 3 removes proposed rule text to better align the proposed rule change with the rules of other exchanges, and makes a number of clarifying changes to the proposed rule text and the description of and statutory basis for the proposed rule change.

In Amendment No. 3, the Exchange is removing proposed Rule 5055(e)(2)(v)(a) regarding when a FLEX Equity Option order may be submitted. The Exchange is proposing this change to better align the proposed rule text with the already established rules of other exchanges. The Exchange believes this change is consistent with the Act and does not raise any novel regulatory issues as it simply conforms the proposed rule text with the already effective rules of other exchanges.[14] In addition, the Original Filing and Amendment No. 2 were already subject to a full notice-and-comment period.

In Amendment No. 3, the Exchange is adding rule language to proposed Rule 5055(b)(3) to clarify that FOO Orders may only be traded on the Trading Floor. This language mirrors rule text that is in proposed Rule 7605(b) and is intended to further clarify that FOO Orders may only be traded on the Trading Floor. The Exchange believes this change is consistent with the Act and does not raise any novel regulatory issues as it simply adds clarifying language that better aligns proposed Rule 5055(b)(3) with the text of proposed Rule 7605(b) that was already part of the Original Filing and Amendment No. 2, which were subject to a full notice-and-comment period.

The Exchange notes that Amendment No. 3 is solely intended to further clarify the proposed rule text and conform the rule text with the already established rules of other exchanges, and to provide additional detail and specificity with respect to the proposed rule change and additional information in support of the purpose and statutory basis for the proposed rule change.

Summary

The Exchange proposes to adopt rules to govern FLEX Equity Options and a new order type to trade FLEX Equity Options on the BOX Trading Floor.[15] The Exchange also proposes to amend Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations) to reflect the introduction of FLEX Equity Option trading on the Exchange. FLEX Equity Options are options with flexible terms such that Participants[16] can customize expiration date, exercise price, and exercise style. FLEX Equity Options are designed to meet the needs of investors for greater flexibility in selecting the terms of options within the parameters of the Exchange's proposed rules. FLEX Equity Options are not preestablished for trading and are not listed individually for trading on the Exchange. Rather, investors select FLEX Equity Option terms and are limited by the parameters detailed below in their selection of those terms. As a result, FLEX Equity Options allow investors to satisfy more specific, individualized investment objectives than may be available to them in the standardized options market. Specifically, FLEX Equity Options will be subject to proposed Rule 5055 and will be traded as FLEX Open Outcry Orders (''FOO Orders'') on the BOX Trading Floor under proposed Rule 7605. FLEX Equity Options are a type put or call, and allow investors to choose an exercise price of any dollar amount in minimum increments of $0.01,[17] an exercise style of American or European,[18] and an expiration date of any month, business day and year no more than 15 years from the date on which a FLEX Equity Option is executed.[19] As discussed further below, FLEX Equity Options will not be permitted with the same terms as an existing Non-FLEX Equity Option listed on the Exchange.[20] Because of

[12] *See* Securities Exchange Act Release No. 98380 (September 13, 2023), 88 FR 64482 (September 19, 2023) (SR–BOX–2023–20) (Notice of Filing of Proposed Rule Change to Adopt Rules to Govern FLEX Equity Options and a New Order Type to Trade FLEX Equity Options on the BOX Trading Floor).

[13] *See* Securities Exchange Act Release No. 99192 (December 15, 2023), 88 FR 88437 (December 21, 2023) (SR–BOX–2023–20) (Notice of Filing of Amendment No. 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt Rules To Govern FLEX Equity Options and a New Order Type To Trade FLEX Equity Options on the BOX Trading Floor).

[14] *See* NYSE American Rule 903G(a) *and* NYSE Arca Rule 5.32–O(b). The Exchange notes that, unlike the NYSE American and NYSE Arca rules, the Exchange's proposed rule change does not include FLEX Index Options.

[15] The term ''Trading Floor'' or ''Options Floor'' means the physical trading floor of the Exchange located in Chicago. The Trading Floor shall consist of one ''Crowd Area'' or ''Pit'' where all option classes will be located. The Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. A Floor Broker must open outcry an order in the Crowd Area. *See* BOX Rule 100(a)(68).

[16] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an ''Options Participant'' and ''BSTX Participant.'' *See* BOX Rule 100(a)(42).

[17] *See* proposed Rule 5055(e)(2)(iii).

[18] *See* proposed Rule 5055(e)(2)(iv).

[19] *See* proposed Rule 5055(e)(2)(v).

[20] Provided the options on an underlying security are otherwise eligible for FLEX trading, FLEX Equity Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date, and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security. *See* proposed Rule 5055(e)(1). FLEX Equity Options shall also be permitted before the options are listed for trading as Non-FLEX Equity Options. Once and if the identical option series are listed for trading as Non-FLEX Equity Options, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Option series, and (ii) any further trading in the series would be

their composition, the Exchange believes that FLEX Equity Options may allow investors to more closely meet their individual investment and hedging objectives by customizing option contracts for the purpose of satisfying particular investment objectives that could not be met by the standardized markets.

Background

The Securities and Exchange Commission (''Commission'') approved the trading of FLEX options in 1993.[21] At the time, the Chicago Board Options Exchange, Inc., now Cboe Exchange, Inc. (''CBOE'') proposed FLEX options based on the Standard and Poor's Corporation 500 and 100 Stock Indexes (referred to as the ''CBOE Order'' herein).[22] These FLEX options were offered as an alternative to an over-the-counter (''OTC'') market in customized equity options.[23] Several years after the initial approval, the Commission approved the trading of additional FLEX options on specified equity securities.[24] In its order, the Commission provided: ''The benefits of the Exchanges' options markets include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC [Options Clearing Corporation] for all contracts traded on the Exchange.'' [25]

The Exchange notes that FLEX options are currently traded on CBOE, NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and Nasdaq PHLX LLC (''PHLX'').[26] The Exchange notes further that CBOE offers electronic and open outcry FLEX option trading while NYSE American, NYSE Arca, and PHLX offer only open outcry trading of FLEX options.

In August 2017, the Commission approved the Exchange's proposal to adopt rules for an open outcry trading floor.[27] The Exchange based the rules for the BOX Trading Floor on the rules of the options exchanges that had established trading floors at that time. When the BOX Trading Floor was adopted in 2017, it was the first options trading floor to be established since the 1970s.[28] As such, the BOX Trading Floor rules have certain differences to the trading floor rules at the other options exchanges, to account for the unique nature of BOX's Trading Floor and to modernize the existing trading floor rules and surveillance practices. The BOX Trading Floor has been operating since 2017 and is now well-established. The Exchange believes that its unique features for open-outcry trading provide value to Floor Participants. The Exchange now proposes to allow for the trading of FLEX Equity Options as FOO Orders on the BOX Trading Floor.[29]

Proposal

The Exchange proposes to adopt Rule 5055 titled FLEX Equity Options which describes and governs FLEX Equity Options. Rule 5055(a) details the applicability of other Exchange rules with respect to the proposed FLEX Equity Options. Specifically, the trading of FLEX Equity Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Rules 5055 and 7605.[30] The Exchange has conducted a thorough review of its existing Rules to ensure that proposed Rule 5055(a) accurately reflects the application of the Exchange's Non-FLEX Equity Option Rules to FLEX Equity Options,[31] as well as those Non-FLEX Equity Option Rules that would not apply to FLEX Equity Options.[32] As described herein, the only means by which the Exchange intends to permit FLEX Equity Options to be traded is via the proposed FOO Order type. To the extent the Exchange proposes to adopt additional rules for the trading of FLEX Equity Options, including electronic trading of FLEX Equity Options or any other order type or trading mechanism,[33] the Exchange would file a separate proposed rule change with the Commission.

The rules proposed by the Exchange are uniquely applicable to FLEX Equity Options in order to accommodate their special characteristics. For example, the BOX Book [34] and the Complex Order Book [35] shall not be available for transactions in FLEX Equity Options because, consistent with other exchanges' FLEX rules, there will be no pre-established series [36] and no electronic trading of FLEX Equity Options.[37] While electronic trading in FLEX options is available on CBOE,[38] the Exchange at this time intends to introduce FLEX Equity Options on the Trading Floor in open outcry only, consistent with other markets that trade these customized options solely on their trading floors in open outcry.[39] The Exchange notes that rules that contemplate the operation of or

as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules. *See* proposed Rule 5055(f)(1).

[21] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17) (Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc., Relating to Flexible Exchange Options (''FLEX Options'')).

[22] *Id.*

[23] *Id.*

[24] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Options on Specified Equity Securities).

[25] *Id.* The Exchange notes that the Commission found pursuant to Rule 9b–1 under the Act, that FLEX Options, including FLEX Equity Options, are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. *Id.*

[26] *See* CBOE Rules 4.20–4.22 and 5.70–5.75 *and* NYSE American Rules 900G–910G *and* NYSE Arca Rules 5.30–O–5.41–O *and* PHLX Options 8, Section 34.

[27] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (finding that the proposed rule change was consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange).

[28] *See https://www.optionsplaybook.com/options-introduction/stock-option-history/.*

[29] The Exchange notes that the Commission has received one comment letter in support of the proposed rule change. The commenter believes that permitting BOX to offer FLEX Equity Options will expand competition and capacity and thus drive better execution experiences for the public. *See* Letter from Anish Vora, CEO, FCF Holdings LLC, and Board of Directors of NYSE, to the SEC (September 29, 2023) (*https://www.sec.gov/comments/sr-box-2023-20/srbox202320-638842.htm*).

[30] *See* proposed Rule 5055(a). Proposed Rule 5055(a) is based on CBOE Rule 5.72(a).

[31] *See* proposed Rule 5055(a). For example, Rules 7010 (Fees and Charges), 7020 (Days and Hours of Business), 7030 (Units of Trading), and 7080 (Trading Halts) apply to FLEX Equity Options and Non-FLEX Equity Options alike. The Exchange notes that an Options Exchange Official may halt trading in any option contract in the interests of a fair and orderly market (factors that shall be considered are enumerated in Rule 7080(a)(1)) and will halt trading in FLEX Equity Options when Non-FLEX Equity Options on the same underlying security are halted. The BOX Trading System is also designed to enforce the Exchange's trading halt rules such that a trading halt in Non-FLEX Equity Options will result in a trading halt in FLEX Equity Options on the same underlying security.

[32] *See,* for example, *infra* note 40 and accompanying text, explaining that FLEX Equity Options may only trade as a FOO Order on the Trading Floor and may not trade using any other order type or trading mechanism, including those designed for electronic trading.

[33] *Id.*

[34] The term ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10).

[35] The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* BOX Rule 7240(a)(8).

[36] *See infra* note 56.

[37] *See* proposed Rule 5055(a)(1). Proposed Rule 5055(a)(1) is based on NYSE Arca Rule 5.30–O(c).

[38] *See, e.g.,* CBOE Rules 5.73 and 5.74.

[39] *See, e.g.,* NYSE Arca Rule 5.30–O(c).

interaction with the BOX Book and the Complex Order Book will not apply to FLEX Equity Options, given that FLEX Equity Options may only be traded as FOO Orders on the Trading Floor and FOO Orders may not be placed in the BOX Book or the Complex Order Book.[40] Additionally, the Exchange is proposing to codify that Options Exchange Officials have the same duties and ability to enforce rules applicable to the trading of FLEX Equity Options as they do for all other activity on the Trading Floor.[41]

FLEX Equity Options will only be permitted in puts and calls that do not have the same exercise style (American or European), same expiration date and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security.[42] In addition, once, and if, identical option series are listed for trading as Non-FLEX Equity Options, (1) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Option series, and (2) any further trading in the series would be as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules.[43] Therefore, FOO Orders, whose terms must be different from options that are already available for trading, would not be fungible with interest resting on the BOX Book or Complex Order Book. Accordingly, the Exchange believes FOO Orders would not be able to trade through interest resting on the BOX Book or Complex Order Book nor would interest resting on the BOX Book or Complex Order Book lose priority to FOO Orders.

The Exchange proposes Rule 5055(b) which defines the following terms: FLEX Equity Option, Non-FLEX Equity Option, FLEX Market Maker, and FLEX Open Outcry Order. Specifically, the term ''FLEX Equity Option'' means an option on a specified underlying security that is subject to Rule 5055.[44] ''Non-FLEX Equity Option'' means an option contract that is not a FLEX Equity Option.[45] ''FLEX Open Outcry Order'' (''FOO Order'') means a FLEX Equity Option order as defined in proposed Rule 7605.[46] ''FLEX Market Maker'' means a Market Maker that is qualified by the Exchange to trade FLEX Equity Options and meets the requirements of proposed Rule 5055(k).[47] The proposed functionality for FOO Orders is designed to be similar to the Exchange's existing Qualified Open Outcry (''QOO'') Orders because both order types will be transacted on the Trading Floor and BOX believes they should follow similar procedures, excluding provisions related to the BOX Book, as discussed below.[48] FLEX Equity Options shall not be traded other than as FOO Orders, which may only be traded on the Trading Floor.[49] The Exchange also proposes to specify in proposed Rule 5055(b)(3) that, for the avoidance of doubt, FLEX Equity Options may not be traded using any other order type or trading mechanism offered by the Exchange.

The Exchange proposes Rule 5055(c) which states that, in addition to the restrictions in Rule 5055(b)(3), certain Exchange rules do not apply to transactions in FLEX Equity Options. Specifically, Rule 7600 ''Qualified Open Outcry Orders—Floor Crossing'' and Rule 7620 ''Accommodation Transactions'' do not apply to transactions in FLEX Equity Options.[50] These rules represent order types that currently apply to Non-FLEX Equity Options on the BOX Trading Floor and are specifically excluded given that the Exchange is proposing the FOO Order type to be used exclusively for trading FLEX Equity Options. However, the Exchange proposes that certain Rule 7600 Interpretive Materials apply to FLEX Equity Options; in particular IM–7600–2 [51] and IM–7600–5.[52] IM–7600–2

[40] The Exchange notes that FLEX Equity Options may not trade via the PIP, COPIP, Facilitation and Solicitation Auctions, or as Qualified Contingent Cross (''QCC''), Complex QCC, Customer Cross, Complex Customer Cross Orders, and any new order type not explicitly included within the FLEX Equity Option rules pursuant to rule filings submitted under Section 19(b) of the Act. *See* BOX Rules 7110, 7150, 7245, and 7270. If the Exchange intended to allow FLEX Equity Options to trade via the PIP, COPIP, Facilitation and Solicitation Auctions, or as (''QCC''), Complex QCC, Customer Cross, and Complex Customer Cross Orders, the Exchange would be required to file a proposed rule change with the Commission to amend its rules to allow for the inclusion of FLEX Equity Options in the relevant rule text.

[41] *See* proposed Rule 5055(a)(2).

[42] *See* proposed Rule 5055(e)(1). Proposed Rule 5055(e)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01.

[43] *See* proposed Rule 5055(f)(1). Proposed Rule 5055(f)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01.

[44] *See* proposed Rule 5055(b)(1). The Exchange notes that proposed Rule 5055(e)(2)(i) provides that FLEX Equity Options on underlying securities may be authorized pursuant to Rule 5020.

[45] *See* proposed Rule 5055(b)(2). Proposed Rule 5055(b)(2) is based on NYSE Arca Rule 5.30–O(b)(11).

[46] *See* proposed Rule 5055(b)(3).

[47] *See* proposed Rule 5055(b)(4).

[48] *See* BOX Rule 7600. *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[49] *See* proposed Rule 5055(b)(3).

[50] *See* proposed Rule 5055(c). Proposed Rule 5055(c) is based on NYSE Arca Rule 5.30–O(d).

[51] BOX IM–7600–2 provides that nothing prohibits a Floor Broker from buying or selling a stock, security futures, or futures position following receipt of an option order, including a Complex Order, provided that prior to announcing such order to the trading crowd: (a) the option order is in a class designated as eligible for ''tied hedge'' transactions (as described below) as determined by the Exchange and is within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order. Additionally, there shall be no aggregation of multiple orders to satisfy the size parameter, and for Complex Orders involved in a tied hedge transaction at least one leg must meet the minimum size requirement; (b) such Floor Broker shall create an electronic record that it is engaging in a tied hedge transaction in a form and manner prescribed by the Exchange; (c) such hedging position is: (1) comprised of a position designated as eligible for a tied hedge transaction as determined by the Exchange and may include the same underlying stock applicable to the option order, a security future overlying the same stock applicable to the option order or, in reference to an index or Exchange-Traded Fund Shares (''ETF''), a related instrument. A ''related instrument'' means, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' means, in reference to an ETF option, a futures contract on any economically equivalent index applicable to the ETF underlying the option order; (2) brought without undue delay to the trading crowd and announced concurrently with the option order; (3) offered to the trading crowd in its entirety; and (4) offered, at the execution price received by the Floor Broker introducing the option, to any in-crowd Floor Participant who has established parity or priority for the related options; (d) the hedging position does not exceed the option order on a delta basis; (e) all tied hedge transactions (regardless of whether the option order is a simple or Complex Order) are treated the same as Complex Orders for purposes of the Exchange's open outcry allocation and reporting procedures. Tied hedge transactions are subject to the existing NBBO trade-through requirements for options and stock, as applicable, and may qualify for various exceptions; however, when the option order is a simple order, the execution of the option leg of a tied hedge transaction does not qualify for the NBBO trade-through exception for a Complex Trade (defined in Rule 7610(e)); (f) in-crowd Floor Participants that participate in the option transaction must also participate in the hedging position and may not prevent the option transaction from occurring by giving a competing bid or offer for one component of such order; (g) in the event the conditions in the non-options market prevents the execution of the non-option leg(s) at the agreed prices, the trade representing the options leg(s) may be cancelled; and (h) prior to entering tied hedge orders on behalf of Customers, the Floor Broker must deliver to the Customer a written notification informing the Customer that his order may be executed using the Exchange's tied hedge procedures. The written notification must disclose the terms and conditions contained in this Interpretative Material and be in a form approved by the Exchange. *See* BOX IM–7600–2. The Exchange notes that another exchange makes similar orders available for FLEX trading. *See* PHLX Options 8, Section 34(b)(2) (new citation of PHLX Options 8, Section 34(f)(2) to be implemented prior to August 2024).

[52] BOX IM–7600–5 provides that a Participant shall not utilize the Trading Floor to effect any transaction for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises

and IM–7600–5 relate to tied hedge orders and to compliance with Section 11(a)(1) of the Act, respectively, and will apply to the proposed FOO Orders in the same manner as they currently apply to QOO Orders. Because these provisions would apply equally to FLEX Equity Options as they do to Non-FLEX Equity Options, they need not be duplicated for purposes of the proposed rules.

The Exchange proposes Rule 5055(d) which states that FLEX Equity Options will have no trading rotations.[53] Trading rotations are used to open or reopen a series of options on BOX at a single price.[54] There is a period of time before the market in the underlying security opens during which orders placed on the BOX Book do not generate trade executions but may participate in the Opening Match.[55] FLEX Equity Options will not be placed on the BOX Book, and therefore will not have trading rotations because there will be no requirement for specific FLEX Equity Option series to be quoted or traded each day. FLEX Equity Options are created with terms unique to individual investment objectives. As such, each investor may require FLEX Equity Options with slightly different terms than those already created. These individually defined FLEX Equity Options are customized for each investor and therefore trading rotations may not be useful for other investors who may create their own FLEX Equity Options because trading rotations are designed, in part, to determine a single opening, or reopening, price based on orders and quotes from multiple Participants. With the bespoke nature of FLEX Equity Options there is not the opportunity, nor need, to bring together multiple orders and quotes as part of a trading rotation.

Further, the Exchange proposes Rule 5055(e) which provides that FLEX Equity Options will not be preestablished for trading and, provided the options on an underlying security are otherwise eligible for FLEX trading, FLEX Equity Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date, and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security. Proposed Rule 5055(e) further provides that FLEX Equity Options must include one of each of the terms of a FLEX Equity Option that are described in the proposed Rule.[56] Specifically, (i) the Exchange may authorize for trading a FLEX Equity Option class on any underlying security if it may authorize trading a Non-FLEX Equity Option class on that underlying security pursuant to Rule 5020,[57] and that has Non-FLEX Equity Options on such security listed and traded on at least one national securities exchange, even if the Exchange does not list that Non-FLEX Equity Option class for trading;[58] (ii) the option type may be put or call;[59] (iii) the exercise price may be any dollar amount in minimum increments of $0.01;[60] (iv) the exercise style may be American or European;[61] and (v) the expiration date may be any business day (specified to the day, month, and year) no more than 15 years from the date of the FLEX Equity Option transaction.[62] Additionally, the exercise settlement of FLEX Equity Options shall be by physical delivery of the underlying security.[63]

Next, the Exchange proposes Rule 5055(f) titled Fungibility of FLEX Equity Options. Proposed Rule 5055(e)(1), described above, limits FLEX Equity Option terms such that options on an underlying security otherwise eligible for FLEX trading will only be permitted in puts and calls that do not have the same exercise style (American or European), same expiration date and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security.[64] Notwithstanding the foregoing, FLEX Equity Options that may in the future have the same terms as Non-FLEX Equity Options will be permitted before the options are listed for trading as Non-FLEX Equity Options. Once and if the identical option series are listed for trading as Non-FLEX Equity Options: (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Option series,[65] and (ii) any further trading in the series would be as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules,[66] in addition to any other rules that apply to Non-FLEX Equity Options.[67] In the event a Non-

investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Exchange Act. *See* BOX IM–7600–5.

[53] *See* proposed Rule 5055(d). Proposed Rule 5055(d) is based on NYSE Arca Rule 5.31–O(b).

[54] *See* BOX Rules 7070(e)(2) and (l).

[55] *See* BOX Rules 7070(a) and (e). The Exchange notes that trading rotations are referred to in BOX Rule 7070(e) as the Opening Match.

[56] Proposed Rule 5055(e) is based on NYSE Arca Rule 5.32–O. The Exchange notes that it is not proposing FLEX Index Options and thus has not incorporated applicable provisions as Index Options do not trade on BOX.

[57] Rule 5020 provides criteria for the listing of options on several different underlying types of securities, including securities registered with the SEC under Regulation NMS of the Act (''NMS stock''), Exchange-Traded Fund Shares, and Index-Linked Securities. *See* BOX Rule 5020.

[58] *See* proposed Rule 5055(e)(2)(i). Proposed Rule 5055(e)(2)(i) is based on NYSE Arca Rule 5.32–O(f)(1).

[59] *See* proposed Rule 5055(e)(2)(ii). Proposed Rule 5055(e)(2)(ii) is based on NYSE Arca Rule 5.32–O(b)(2).

[60] *See* proposed Rule 5055(e)(2)(iii). Proposed Rule 5055(e)(2)(iii) is based on NYSE Arca Rule 5.32–O(f)(2) (exercise prices and premiums may be stated in terms of: (i) a dollar amount; (ii) a method for fixing at the time a FLEX Request for Quote or FLEX Order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the NYSE Arca on the trade date). The Exchange notes that the proposal only includes exercise, bid, and offer prices in terms of a dollar amount.

[61] *See* proposed Rule 5055(e)(2)(iv). Proposed Rule 5055(e)(2)(iv) is based on NYSE Arca Rule 5.32–O(b)(3).

[62] *See* proposed Rule 5055(e)(2)(v). Proposed Rule 5055(e)(2)(v) is based on NYSE Arca Rules 5.32–O(b)(4) and (6). The Exchange notes that it has omitted the exception for FLEX Index Options because BOX does not list FLEX Index Options and FLEX Index Options are not part of this proposal.

[63] *See* proposed Rule 5055(e)(3). Proposed Rule 5055(e)(3) is based on NYSE Arca Rule 5.32–O(f)(3)(i). The Exchange notes that NYSE Arca Rule 5.32–O(f)(3)(i) includes references to Exchange-Traded Fund Shares and FLEX ByRDs that the Exchange is not including because the Exchange believes it is not necessary to specifically reference Exchange-Traded Fund Shares as they are included under the term underlying security. Additionally, the Exchange notes that FLEX ByRDs are not being proposed on the Exchange.

[64] *See* proposed Rule 5055(e)(1). Proposed Rule 5055(e)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchanges notes that its system enforces the requirement that a FLEX Equity Option does not have the same exercise style (American or European), same expiration date and same exercise price as a Non-FLEX Equity Option that is already available for trading on the same underlying security. Specifically, the system will reject an order in a FLEX Equity Option if the order is received with the same exercise style (American or European), same expiration date and same exercise price as a Non-FLEX Equity Option that is already available for trading on the same underlying security on the Exchange.

[65] An open position resulting from a transaction on the Exchange becomes fungible post-trade and is separate from the execution occurring on the Exchange. For example, assume a Participant buys one (1) American style AAPL call option expiring on October 9, 2024, with a strike price of 150, which is a FLEX series because there is no standard option listed with those same terms. Now assume, while holding this position, a standard option with the same terms is listed (American style AAPL call option expiring on October 9, 2024, with a strike price of 150). After this standard option is listed, the Participant purchases one (1) contract in this non-FLEX option series. After this second transaction, the Participant will have an open position of two (2) contracts in the standard AAPL call expiring on October 9, 2024, with a 150 strike price.

[66] This includes all priority and trade-through requirements on the Exchange (*see, e.g.,* Rule 7130).

[67] *See* proposed Rule 5055(f)(1). Proposed Rule 5055(f)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchange notes that FLEX Equity Options previously traded as part of a Complex FOO Order or Multi-Leg FOO Order where the respective Non-FLEX Equity Option series is later listed may not be traded as part of a Complex FOO Order or Multi-leg FOO Order except as

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FLEX Equity Option series is added intra-day, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the series is added.[68] In the event the Non-FLEX Equity Option series is added on a trading day after the position is established, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position as a non-FLEX transaction consistent with the requirements of Rule 5055(f)(1).

The Exchange proposes Rule 5055(g) which states that the minimum quoting and trading increment for FLEX Equity Option contracts traded on BOX will be one cent ($0.01) for all series.[69]

The Exchange proposes Rule 5055(h) which states that FLEX Equity Options will be subject to the exercise by exception provisions of Rule 805 of the OCC, titled Expiration Exercise Procedure.[70] Rule 805 provides provisions for the automatic exercise of certain options upon expiration.

The Exchange proposes Rule 5055(i) which details position limits for FLEX Equity Options. Specifically, 5055(i)(1) states that FLEX Equity Options will not be subject to position limits, except as long as the options positions remain open, positions in FLEX Equity Options that expire on a third Friday-of-the-month shall be aggregated with positions in Non-FLEX Equity Options on the same underlying security and shall be subject to the position and exercise limits set forth in this proposed rule, and in the current BOX rules.[71] Positions in FLEX Equity Options shall not be taken into account when calculating position limits for Non-FLEX Equity Options, other than for positions in FLEX Equity Options that expire on a third Friday-of-the-month, as discussed below.[72]

The Exchange proposes that rather than be subject to FLEX position limits, each Participant (other than a Market Maker) that maintains a position on the same side of the market in excess of the standard position limit for Non-FLEX Equity Options[73] of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity Option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange. The Exchange notes that other exchanges that offer FLEX equity options, adopted position limit reporting when FLEX equity options were first permitted to trade without position limits and exercise limits.[74] In addition, whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity Option position in excess of the standard position limit for Non-FLEX Equity Options of the same class, the Exchange may, pursuant to its authority under Rule 10130(b), consider imposing additional margin upon the account maintaining such under-hedged position. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under Rule 15c3–1 under the Act[75] to the extent of any margin deficiency resulting from the higher margin requirement.[76]

The Exchange proposes Rule 5055(j) which governs exercise limits for FLEX Equity Options. Specifically, proposed Rule 5055(j) states that exercise limits for FLEX Equity Options shall be equivalent to the position limits established in this proposal; accordingly, except as described below, there shall be no exercise limits for FLEX Equity Options.[77] FLEX Equity Options will not be taken into account when calculating exercise limits for Non-FLEX Equity Options, except that as long as the option positions remain open, positions in FLEX Equity Options which expire on a third Friday-of-the-month shall be aggregated with positions in Non-FLEX Equity Options on the same underlying security and will be subject to Non-FLEX Equity Option exercise limits as applicable.[78]

The Exchange proposes Rule 5055(k) which details the Letter of Guarantee required for Market Makers to trade FLEX Equity Options. Specifically, proposed Rule 5055(k) states that no Market Maker shall effect any transaction in FLEX Equity Options unless a Letter of Guarantee has been issued by a clearing member organization and filed with the Exchange pursuant to Rule 8070 specifically accepting financial responsibility for all FLEX Equity Option transactions made by such Market Maker and such letter has not been revoked under Rule 8070(c).[79] A

provided in proposed Rules 5055(f)(2) and 7605(d)(3) and (4) once such Non-FLEX Equity Option series has been listed on the Exchange. *See* proposed Rules 7605(d)(1), (3) and (4). For example, assume a Participant executes a Complex FOO Order to buy strategy A + B where A and B are both FLEX Equity Option series. Now assume that prior to the opening on the next trading day, a Non-FLEX Equity Option series with the same terms (underlying security, type, exercise price, exercise style, and expiration date) as A has been listed on the Exchange. If the Participant decided to close out their open position in strategy A + B, it would need to be done as two separate orders for the component legs of the original order: (i) selling B, a FLEX Equity Option, by submitting a FOO Order, and (ii) selling the corresponding Non-FLEX Equity Option series that has the same terms as A because A has become fungible with the Non-FLEX Equity Option series with the identical terms. Trading in A would be subject to the non-FLEX trading procedures and rules. *See* proposed Rule 5055(f)(1).

[68] *See* proposed Rule 5055(f)(2). Proposed Rule 5055(f)(2) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchange notes that Complex FOO Orders and Multi-Leg FOO Orders, discussed below, may be traded with one or more closing only component legs. The Exchange notes that proposed Rule 5055(f) differs from NYSE Arca Rule 5.32–O, Commentary .01 in that it includes proposed Rules 5055(f)(2) and (3), which detail the interaction between proposed Rules 5055(e)(1) and (f)(1).

[69] *See* proposed Rule 5055(g). Proposed Rule 5055(g) is based on CBOE Rule 5.4(c)(4). The Exchange notes that minimum increments in percentage terms have been omitted because they are not part of this proposal.

[70] *See* proposed Rule 5055(h). Proposed Rule 5055(h) is based on NYSE Arca Rule 5.32–O(f)(4).

[71] *See* BOX Rules 3120 (Position Limits) and 3140 (Exercise Limits). The Exchange notes that Complex FOO Orders and Multi-Leg FOO Orders when executed result in position changes for the individual component legs of the transaction based on the composition of the Complex or Multi-Leg FOO Order.

[72] *See* proposed Rule 5055(i). Proposed Rule 5055(i) is based on NYSE Arca Rules 5.35–O(a)(iii) and (b). The Exchange notes that Index Options and Binary Return Derivatives (''ByRDs'') are not traded on BOX and therefore FLEX Index Options and FLEX ByRDs will not be traded on BOX and are not included in proposed Rule 5055(i). *See also* CBOE Rule 8.35 *and* NYSE American Rule 906G *and* PHLX Options 8, Section 34(e).

[73] *See* BOX Rule 3120 (Position Limits). The Exchange notes that Complex FOO Orders and Multi-Leg FOO Orders when executed result in position changes for the individual component legs of the transaction based on the composition of the Complex or Multi-Leg FOO Order.

[74] *See* Securities Exchange Act Release Nos. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997) (SR–Amex–96–19; SR–CBOE–96–79; SR–PCX–97–09) (Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. and the Chicago Board Options Exchange, Inc., and Order Granting Approval to Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Elimination of Position and Exercise Limits for FLEX Equity Options) (approval of a pilot program for the elimination of position and exercise limits on FLEX Equity Options) *and* 42223 (December 10, 1999), 64 FR 71158 (December 20, 1999) (SR–Amex–99–40; SR–PCX–99–41; SR–CBOE–99–59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

[75] *See* 17 CFR 240.15c3–1.

[76] *See* proposed Rule 5055(i)(1). Proposed Rule 5055(i)(1) is based on NYSE Arca Rule 5.35–O(b).

[77] *See* proposed Rule 5055(j). Proposed Rule 5055(j) is based on NYSE Arca Rule 5.36–O. *See also* proposed Rule 5055(i).

[78] *See* proposed Rule 5055(i).

[79] *See* proposed Rule 5055(k). Proposed Rule 5055(k) is based on NYSE Arca Rule 5.41–O(a). The

Letter of Guarantee will be required for a Market Maker to be qualified to trade FLEX Equity Options.

Similarly, the Exchange proposes Rule 5055(l), which provides that no Floor Broker [80] shall effect any transaction in FLEX Equity Options unless a Letter of Authorization has been issued by a clearing member organization and filed with the Exchange specifically accepting responsibility for the clearance of FLEX Equity Option transactions of the Floor Broker, and that such letter will remain in effect until a written revocation is received by the Exchange.[81]

FLEX Open Outcry (''FOO'') Orders

The Exchange proposes to introduce a new order type to facilitate FLEX Equity Option transactions on the BOX Trading Floor. Specifically, the Exchange proposes to adopt a FOO Order type and to model it after a current order type on the Trading Floor—QOO Orders.[82] Trading FLEX options on an exchange floor in a similar manner as non-FLEX options is consistent with how FLEX orders are traded on another exchange.[83] FOO Orders must consist of options with terms as defined in proposed Rule 5055. Further, FOO Orders are limited solely to FLEX Equity Options.[84] FOO Orders are limited solely to the BOX Trading Floor and may be entered only by Floor Brokers.[85] Floor Brokers must also be registered under Rule 7550. Prior to the announcement of such FOO Orders in the trading crowd, Floor Brokers must record all FOO Orders pursuant to Rule 7580(e)(1).[86]

Floor Market Makers in good standing under Rule 8500 may apply to be FLEX Market Makers. FOO Orders may be traded by FLEX Market Makers and will be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605.[87] All Floor Market Makers in good standing may apply to be FLEX Market Makers. The Exchange shall qualify at least three FLEX Market Makers in accordance with a FLEX-specific qualification process prescribed by the Exchange to perform as Market Makers in FLEX Equity Options on the Trading Floor.[88] The Exchange notes that each FLEX Market Maker will be required to quote all classes of FLEX Equity Options on the Trading Floor.[89] Additionally, a Floor Broker shall ascertain that at least one FLEX Market Maker is present in the Crowd Area prior to announcing an order for execution.[90] The Exchange notes that the Commission provided in its order approving the BOX Trading Floor that this requirement, among others, is designed to increase the opportunities for another Floor Participant to compete to interact with the orders on the Trading Floor.[91] For FLEX Equity Options, this means that at least one of the FLEX Market Makers, out of the at least three required to be qualified by the Exchange, is present in the Crowd Area when the FOO Order is announced.[92]

Exchange notes that, while NYSE Arca allows an existing Letter of Guarantee to be amended specifically to include FLEX transactions upon approval by the OCC, the Exchange's proposal does not include such a provision because the Exchange will require a separate Letter of Guarantee. The Exchange notes that a Market Maker's Letter of Guarantee will remain effective until a revocation is received by the Exchange.

[80] A Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders. A Floor Broker must be registered as an Options Participant prior to registering as a Floor Broker. *See* BOX Rule 7540.

[81] *See* proposed Rule 5055(l). Proposed Rule 5055(l) is based on NYSE Arca Rule 5.41–O(b). The Exchange notes that, while NYSE Arca allows an existing Letter of Authorization to be amended specifically to include FLEX transactions upon approval by the OCC, the Exchange's proposal does not include such a provision because the Exchange will require a separate Letter of Authorization. The Exchange notes that a Floor Broker's Letter of Authorization will remain effective until a written revocation is received by the Exchange.

[82] *See* proposed Rule 7605. *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (finding that the proposed rule change was consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange).

[83] CBOE allows a FLEX Order to be represented and executed in the same manner as a non-FLEX Order. *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) excludes certain provisions applicable to non-FLEX options, such as those related to Book priority. Similarly, the Exchange has proposed to exclude certain provisions applicable to Non-FLEX Equity Options, including those related to BOX Book priority. *See infra* note 122 (explaining that book priority provisions are not necessary for FOO Orders because there will be no FLEX Equity Option interest on the BOX Book). *See also* proposed Rule 5055(a)(1) (providing that the BOX Book and Complex Order Book shall not be available for transactions in FLEX Equity Options).

[84] *See* proposed Rule 7605(a).

[85] *See* proposed Rule 7605(b). Proposed Rule 7605(b) is based on BOX Rules 7600(a)(2) and (3) and NYSE Arca Rule 5.41–O(b). Additionally, the Exchange is proposing to add a statement clarifying that Floor Brokers must record all FOO Orders pursuant to Rule 7580(e)(1) prior to the announcement of such FOO Orders, which is the requirement for all orders on the Trading Floor.

[86] BOX Rule 7580(e)(1) outlines the requirements for a Floor Broker to record and systematize any orders prior to announcement of such order in the trading crowd.

[87] *See* proposed Rule 7605(c). Proposed Rule 7605(c) is based on NYSE Arca Rules 5.37–O(a) and 5.41–O(a). The Exchange notes that, while NYSE Arca requires at least three FLEX Qualified Market Makers per class, the Exchange's proposal does not qualify FLEX Market Makers per class. The Exchange emphasizes that, pursuant to proposed Rule 7605(c), all FLEX Market Makers must first be registered as Market Makers under the Rule 8000 series and as Floor Market Makers under Rule 8500 before they can be qualified as FLEX Market Makers. Accordingly, all FLEX Market Makers will be subject to the Rule 8000 series (as Market Makers) and Rules 8500 and 8510 (as Floor Market Makers) in their entirety, and such FLEX Market Makers will be required to be familiar with and abide by those Exchange rules where applicable. The statement in proposed Rule 7605(c) providing that FLEX Market Makers are subject to the obligations and restrictions of Rule 8510 ''unless otherwise specified'' in Rule 7605 is simply intended to allow for certain obligations and restrictions unique to FLEX Market Makers' trading in FLEX Equity Options that differ from those Market Makers' activities in Non-FLEX Equity Options. *See, e.g.,* proposed Rules 7605(g) and (h) (providing FLEX-specific quoting obligations and spread differential requirements). For the avoidance of doubt, nothing in proposed Rule 7605 is intended to eliminate or reduce any generally applicable Market Maker or Floor Market Maker obligation, such as a Market Maker's obligation to maintain a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

[88] *Id.* The Exchange notes that qualification of three Floor Market Makers as FLEX Market Makers is a prerequisite for FOO Order trading on the Trading Floor. Additionally, FLEX Market Maker qualification will include the completion of a FLEX-specific Letter of Guarantee and an examination requiring knowledge of FLEX Equity Options, including FLEX Equity Option terms, FLEX Market Maker qualification requirements, FLEX Market Maker quoting obligations, and FOO Order trading procedures. *See* proposed Rule 5055(k). The Exchange notes that its qualification exam does not substitute for any FINRA exam that may also be required. FLEX Market Maker qualification will also include the standard qualification process and requirements applicable to Market Makers and Floor Market Makers more generally, as only Floor Market Makers in good standing and registered under Rule 8000 may apply to be FLEX Market Makers.

[89] The Exchange notes that Floor Market Makers are not currently appointed to specific classes of Non-FLEX Equity Options on the Trading Floor as there is only one trading crowd where all classes are traded. Instead, Floor Market Makers are required to quote all classes when present on the Trading Floor pursuant to BOX Rule 8510(e) (In Classes of Option Contracts Other Than Those to Which Appointed). Specifically, Rule 8510(e) provides that whenever a BOX Floor Market Maker enters the trading crowd he must undertake the obligations specified in Rule 8510(d) (In Classes of Option Contracts to Which Assigned—Affirmative Obligations). This results in all BOX Floor Market Makers being required to quote all classes on the Trading Floor. The same will apply to FLEX Market Makers. *See infra* note 152.

[90] *See* proposed Rule 7605(e)(3). Proposed Rule 7605(e)(3) is similar to BOX Rule 7580(a), which applies to QOO Orders on the Trading Floor and requires a Floor Broker to ascertain that at least one Floor Market Maker is present in the Crowd Area prior to announcing an order for execution.

[91] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[92] The Exchange notes that the requirement to have at least three qualified FLEX Market Makers

Continued

On the BOX Trading Floor today, a Floor Broker may bring an unmatched order (*i.e.,* the initiating side of a QOO Order) to the Trading Floor in order to seek liquidity. If the Floor Broker attempts to source the contra-side, the Floor Broker must announce the unmatched order to the trading crowd.[93] After finding sufficient quantity to match the initiating side of an unmatched order pursuant to Rules 7580(e)(2) and 7600(b), the Floor Broker is then able to submit a two-sided QOO Order to the BOG[94] as required.[95] Floor Brokers may also enter single-sided orders into the BOX Book using BOX's electronic interface. Specifically, a Floor Broker may receive a matched or unmatched order via a telephone call on the Trading Floor[96] or may have the matched or unmatched order sent electronically to the Floor Broker's order entry mechanism on the Trading Floor prior to submitting the QOO Order to the BOG. Similar to how QOO Orders are introduced on the Trading Floor today, FOO Orders may be brought to the floor as matched or unmatched orders with a Floor Broker receiving the matched or unmatched order via the same methods that Floor Brokers receive them currently on the Trading Floor.[97] The Exchange again notes that trading FLEX options on an exchange floor in a similar manner as non-FLEX options is consistent with how FLEX orders are traded on another exchange.[98]

Next, pursuant to proposed Rule 7605(d), FOO Orders may be Complex Orders (''Complex FOO Order'') or Multi-Leg Orders (''Multi-Leg FOO Order'') as defined in Rules 7240(a)(7) and (10) with no more than the applicable number of legs, as determined by the Exchange and communicated to Participants,[99] including tied hedge orders as defined in IM–7600–2.[100] However, the priority provisions of Rules 7240(b)(2) and (3) do not apply to Complex FOO Orders or Multi-Leg FOO Orders because there will be no Complex Order Book for such orders, nor will there be a BOX Book for the individual FLEX Equity Option components of the Complex FOO Orders or Multi-Leg FOO Orders.[101] Each option leg of a Complex FOO Order or Multi-Leg FOO Order must be for a FLEX Equity Option series with the same underlying security and must have the same exercise style (American or European).[102] If a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be permitted to close its position(s) under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the Non-FLEX Equity Option series is added. If a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the Complex FOO Order or Multi-Leg FOO Order position is established, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be required to execute separate FLEX Equity Option and Non-FLEX Equity Option transactions to close its position(s), such that FLEX Equity Option component leg(s) would trade under the FLEX trading procedures and Non-FLEX Equity Option component leg(s) would trade subject to the non-FLEX trading procedures and rules.[103]

Announcement, Representation, and Execution of a FOO Order

The Exchange proposes Rule 7605(e) which details announcement and representation of FOO Orders on the BOX Trading Floor that is consistent with the current Trading Floor requirements.[104] Specifically, the

is a baseline that must be met in order for any FLEX Equity Option to be traded on the Trading Floor. The requirement that at least one FLEX Market Maker be present when an FOO Order is announced is an additional order-by-order requirement that promotes order competition and is the same requirement for QOO Orders currently.

[93] The Exchange notes that a Floor Broker must announce an agency order that is represented to the trading crowd before submitting the order to the BOG for execution, whether the Floor Broker is representing a single-sided order and soliciting contra-side interest, or the Floor Broker has sufficient interest to match against the agency order already. *See* Rule 7580(e)(2).

[94] The BOX Order Gateway (''BOG'') is a component of the Trading Host which enables Floor Brokers and/or their employees to enter transactions on the Trading Floor. *See* BOX Rule 100(b)(2).

[95] *See* BOX IM–7600–4.

[96] When a Floor Broker receives an order, matched or unmatched, via telephone, the Floor Broker must enter the order electronically into the Floor Broker's order entry mechanism.

[97] *See, e.g.,* Securities Exchange Act Release No. 80720 (May 18, 2017), 82 FR 23657, 23666 (May 23, 2017) (SR–BOX–2016–48) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Adopt Rules for an Open-Outcry Trading Floor) (''[A] Floor Broker may receive a matched or unmatched order via a telephone call on the Trading Floor or may have the matched or unmatched order sent electronically to the Floor Broker's order entry mechanism on the Trading Floor . . . . '').

[98] CBOE allows a FLEX Order to be represented and executed in a similar manner as a non-FLEX Order. *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) excludes certain provisions applicable to non-FLEX options, such as those related to Book priority. Similarly, the Exchange has proposed to exclude certain provisions applicable to Non-FLEX Equity Options, including those related to BOX Book priority. *See infra* note 122 (explaining that book priority provisions are not necessary for FOO Orders because there will be no FLEX Equity Option interest on the BOX Book). *See also* proposed Rule 5055(a)(1) (providing that the BOX Book and Complex Order Book shall not be available for transactions in FLEX Equity Options).

[99] The Exchange notes that this process is the same as current Rule 7600(a)(4) for QOO Orders on the BOX Trading Floor. *See* BOX Informational Circular 2022–18 (June 7, 2022), *https://boxoptions.com/assets/IC-2022-18-Upcoming-Enhancements-to-Complex-Orders.pdf* (providing that the maximum number of legs for Complex Orders is currently 16). A separate notice will be issued for Complex FOO Orders and Multi-Leg FOO Orders.

[100] The Exchange notes that tied hedge orders may not be smaller than 500 contracts per order. *See* BOX IM–7600–2(a).

[101] The Exchange notes that, as with a simple FOO Order, the priority and allocation rules applicable to Complex FOO Orders and Multi-Leg FOO Orders are in proposed Rules 7605(i) (allocation of the initiating side of a FOO Order against the contra-side of the FOO Order and interest from the Trading Crowd) and (k) (Floor Broker guarantee when crossing orders) and current Rule 7610 (priority among Floor Participants in the Trading Crowd).

[102] *See* proposed Rule 7605(d). Proposed Rule 7605(d) is based on CBOE Rules 1.1 (definition of ''Complex Order'') and 5.70(b) and BOX Rule 7600(a)(4). The Exchange does not reference FLEX Index Options or related attributes because Index Options are not traded on BOX and FLEX Index Options are not proposed herein.

[103] *See* Proposed Rules 7605(d)(3) and (4). The Exchange is proposing Rules 7605(d)(3) and (4) to clarify the treatment of Complex FOO Orders and Multi-Leg FOO Orders when a Non-FLEX Equity Option is subsequently listed for a component leg.

[104] Proposed Rule 7605(e) is based on BOX Rules 7600(a), (a)(1), (b) and (c). The Exchange notes that the QOO Order provisions related to market conditions, the NBBO, the BOX Book, book sweep, the Complex Order Book, auctions, and away routing have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, no electronic auctions, and no book sweep for FOO Orders. *See* BOX Rules 7600(c)–(e) and (h). A book sweep is the number of contracts, if any, of the initiating side of a QOO Order that the Floor Broker is willing to relinquish to orders and quotes on the BOX Book that have priority pursuant to Rules 7600(d)(1) and (2). *See* BOX Rule 7600(h). Book sweeps will not apply to FOO Orders. As provided in proposed Rules 5055(e)(1) and (f)(1), FOO Orders must have different terms from orders on the BOX Book and, therefore, could not execute against interest on the BOX Book. For the same reason, the Complex Order priority provisions in Rules 7240(b)(2) and (3), which address the priority of Complex Orders and interest on the BOX Book, do not apply to Complex FOO Orders or Multi-Leg FOO Orders. *See* proposed Rule 7605(d). The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 101. The Exchange also notes that proposed Rule 7605(e) requires that Floor Brokers announcing a FOO Order give Floor Participants a reasonable amount of time to respond, as provided in Rule 100(b)(5). Proposed Rule 7605(e) further provides that the Exchange shall establish, and announce via Regulatory Notice, a minimum period of time that qualifies as a reasonable amount of time that a Floor Broker must allow Floor Participants to respond, which must be between three seconds and five minutes. This differs from current Rule 7600(c), which simply states that Floor Brokers must allow

Exchange proposes that all FOO Orders must be represented to the trading crowd as provided in Rule 7580(e)(2) [105] prior to submitting the agency FOO Order as part of a two-sided order to the Trading Host. The Exchange notes that Floor Brokers may bring unmatched orders (*i.e.,* the initiating side of a FOO Order) to the Trading Floor in order to seek a contra-side. Once a contra-side is sourced, the Floor Broker shall submit the two-sided FOO Order to the BOG.[106] When a Floor Broker submits a FOO Order for execution, the order will be executed in accordance with the proposed rules. A FOO Order on the Exchange is not deemed executed until it is processed by the Trading Host. All transactions occurring from the Trading Floor must be processed by the Trading Host. Floor Brokers are responsible for handling all orders in accordance with Exchange priority rules.

There will be an initiating side and a contra-side of a FOO Order. The initiating side is the order which must be filled in its entirety. The contra-side must guarantee the full size of the initiating side of the FOO Order and can be composed of multiple firms. When the Floor Broker is soliciting interest from the trading crowd when the initiating side was announced or to the extent the trading crowd offers a better price, the contra-side will be the solicited interest from the trading crowd.[107] If the Floor Broker had sufficient interest to match against the initiating side when the initiating side was announced, such Floor Broker interest will be the contra-side to the initiating side. If Floor Participants [108] responded with interest to the initiating side where the Floor Broker provided sufficient interest to match against the initiating side, the Floor Broker will allocate the initiating side of the FOO Order pursuant to proposed Rule 7605(i).[109] The Exchange notes that this negotiation and agreement that occurs in the trading crowd does not result in a final trade, but rather a ''meeting of the minds'' that is then submitted through the BOG for execution. Consistent with current Trading Floor operations, all FOO Orders must be announced to the trading crowd, as provided in Rule 7580(e)(2), prior to the FOO Order being submitted to the BOG.[110] An Options Exchange Official will certify that the Floor Broker adequately announced the FOO Order to the trading crowd.

The FOO Order is not deemed executed until it is processed by the Trading Host. Once the Floor Broker submits the FOO Order to the BOG there will be no opportunity for the submitting Floor Broker,[111] or anyone else, to alter the terms of the FOO Order. After announcing the FOO Order to the trading crowd, the Floor Broker must submit the FOO Order to the BOG for processing by the Trading Host without undue delay, provided that the executing Floor Broker must give Floor Participants a reasonable amount of time to respond, as provided in Rule 100(b)(5). Additionally, the Exchange shall establish, and announce via Regulatory Notice, a minimum period of time (which amount of time must be between three seconds and five minutes) that qualifies as a reasonable amount of time for responses under proposed Rule 7605(e)(2). Such threshold will constitute the minimum possible time that a Floor Broker must give to the trading crowd to respond to a FOO Order; however, based on the characteristics and circumstances of each specific FOO Order, a reasonable amount of time, as provided in Rule 100(b)(5), may require a response interval longer than the minimum threshold. An Options Exchange Official may not waive the minimum threshold established by the Exchange.

The Exchange notes that the proposed floor interaction practice is consistent with the process in BOX Rule 7600 for QOO Orders on the BOX Trading Floor where the main differences are that FOO Orders will not be eligible for the BOX Book or the Complex Order Book, there is no NBBO, and that Floor Brokers must allow Floor Participants a minimum period of time (which amount of time must be between three seconds and five minutes) that qualifies as a reasonable amount of time that a Floor Broker must allow Floor Participants to respond to FOO Orders. Consistent with QOO Orders, a FOO Order is not deemed executed until it is processed by the Trading Host.[112] The Exchange notes that a reasonable amount of time for Floor Participants to respond to a FOO Order, the same as a QOO Order, will be interpreted on a case-by-case basis by an Options Exchange Official based on current market conditions and trading activity on the Trading Floor, provided, for FOO Orders, the minimum threshold discussed above must be satisfied.[113]

The Exchange proposes Rule 7605(f) which states that the minimum size for FLEX Equity Options transactions and quotations shall be one (1) contract.[114] The Exchange also proposes Rule 7605(g) which states that there are no maximum differences between the bid and the offer for FLEX Equity Option quotes.[115]

adequate time for Floor Participants to participate in the transaction as provided in Rule 100(b)(5).

[105] BOX Rule 7580(e)(2) provides that ''A Floor Broker must announce an agency order that he is representing to the trading crowd before submitting the order to the BOG for execution. This announcement must take place whether the Floor Broker is representing a single-sided order and soliciting contra-side interest, or the Floor Broker has sufficient interest to match against the agency order already. If a Floor Broker is holding two agency orders, he will choose which order is the initiating side.''

[106] *See* proposed IM–7605–1. Proposed IM–7605–1 is based on IM–7600–4.

[107] The Exchange notes that priority of bids and offers from Floor Participants in the trading crowd is determined by Rule 7610.

[108] The term ''Floor Participant'' means Floor Brokers as defined in Rule 7540 and Floor Market Makers as defined in Rule 8510(b). *See* BOX Rule 100(a)(26).

[109] *See* proposed Rule 7605(e)(1). Proposed Rule 7605(e)(1) is based on BOX Rule 7600(a)(1). The Exchange notes that provisions related to market conditions, the NBBO, the BOX Book, book sweep, and the Complex Order Book have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, and no book sweep for FOO Orders. *See supra* note 104. The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 101.

[110] *See* proposed Rule 7605(e)(2). Proposed Rule 7605(e)(2) is based on BOX Rules 7600(b) and (c). The Exchange notes that provisions related to market conditions, the NBBO, the BOX Book, book sweep, and the Complex Order Book have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, and no book sweep for FOO Orders. *See supra* note104. The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 101.

[111] The Exchange notes that trades may be allocated as provided in proposed Rule 7605(j). The Exchange notes further that the Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with Rule 7170 (Nullification and Adjustment of Options Transactions including Obvious Errors). *See also* BOX Rule 7640(b) (relating to trading disputes and adjustment or nullification of transactions on the Trading Floor).

[112] *See* proposed Rule 7605(e).

[113] *See* BOX Rule 100(b)(5). The Exchange notes that an Options Exchange Official takes into account various factors including complexity of the trade, general prevailing market conditions, and activity on the Trading Floor at the time the order is announced.

[114] *See* proposed Rule 7605(f). Proposed Rule 7605(f) is based on NYSE Arca Rule 5.32–O(b)(7).

[115] *See* proposed Rule 7605(g). Proposed Rule 7605(g) is based on NYSE Arca Rule 5.37–O(d). The Exchange notes that it has omitted the first part of NYSE Arca Rule 5.37–O(d), which provides FLEX Appointed Market Makers need not provide continuous FLEX Quotes and the Exchange has included the second part of NYSE Arca Rule 5.37–O(d), which provides FLEX Appointed Market Makers need not quote a minimum bid-offer spread in FLEX Equity Options. The Exchange has omitted the first part of NYSE Arca Rule 5.37–O(d) because, pursuant to proposed Rule 7605(h), the Exchange is instead proposing that FLEX Market Makers be obligated to quote FLEX Equity Options in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market, which the Exchange believes will promote a robust and competitive market for FOO

Continued

Pursuant to proposed Rule 7605(h), FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[116]

Allocation of FOO Orders

Next, the Exchange proposes Rule 7605(i) which details the allocation process for FOO Orders. Specifically, the FOO Order will be matched by the Trading Host against the contra-side of the FOO Order, regardless of whether the contra-side order submitted by the Floor Broker is ultimately entitled to receive an allocation pursuant to proposed Rules 7605(i)(1)–(2). If no Floor Participant, other than the executing Floor Broker, is entitled to an allocation, then no further steps are necessary. If however, Floor Participants are entitled to an allocation, the remaining balance of the initiating side of the FOO Order will be allocated as described below.[117]

First, if the FOO Order satisfies the provisions of proposed Rule 7605(k), discussed below, the executing Floor Broker is entitled to 40% of the remaining quantity of the initiating side of the FOO Order.[118] Next, FLEX Market Makers that respond with interest when the Floor Broker announces the FOO Order to the trading crowd, as outlined in Rule 7580(e)(2) and proposed Rule 7605(e), are allocated.[119] When multiple Floor Participants respond with interest, priority in the Trading Crowd is established pursuant to Rule 7610.[120] Last, if interest remains after Floor Participants that responded with interest receive their allocation, the remaining quantity of the initiating side of the FOO Order will be allocated to the executing Floor Broker.[121] The Exchange again notes that similar allocation and priority provisions are already established and apply to responses for QOO Orders on the BOX Trading Floor.[122]

The Exchange proposes that after execution of the FOO Order, the executing Floor Broker is responsible for providing the correct allocations of the initiating side of the FOO Order to an Options Exchange Official or his or her designee, if necessary, who will properly record the order in the Exchange's system.[123] The executing Floor Broker must provide the correct allocations to an Options Exchange Official or his or her designee, in writing, without unreasonable delay.[124] The Exchange notes that the same procedure for recording trade allocations applies to QOO Orders on the BOX Trading Floor today.

Similar to the allocation process in place for QOO Orders, the Exchange proposes to allow for a participation guarantee for certain FOO Orders executed by Floor Brokers on the Trading Floor. Specifically, when a Floor Broker holds an option order of the eligible order size or greater, the Floor Broker is entitled to cross 40% of the remaining contracts of the original order, after all bids or offers at better prices are filled, with other orders that the Floor Broker is holding.[125] The Exchange may determine, on an option by option basis, the eligible size for an order on the Trading Floor to be subject to this guarantee; however, the eligible order size may not be less than 50 contracts. In determining whether an order satisfies the eligible order size requirement, any Complex FOO Order or Multi-Leg FOO Order must contain one leg alone which is for the eligible order size or greater.[126] Nothing in the proposed rule is intended to prohibit a Floor Broker from trading more than their percentage entitlement if the other Participants of the trading crowd do not choose to trade the remaining portion of the order.[127] The Exchange notes that the proposed guarantee process is similar to the guarantee process currently in place for QOO Orders on the BOX Trading Floor.[128]

Orders on the Trading Floor and facilitate a fair and orderly market for the trading of FLEX Equity Options on the Exchange. The Exchange further notes that on NYSE Arca, FLEX Appointed Market Makers are appointed in classes of FLEX Index Options. FLEX Qualified Market Makers are appointed in FLEX Equity Options on NYSE Arca. Further, FLEX Appointed Market Makers have an obligation to enter a quote in response to a request for quote in a FLEX Index Option while FLEX Qualified Market Makers do not have a similar obligation for FLEX Equity Options. The Exchange believes that this distinction is the reason why NYSE Arca Rule 5.37–O(d) only specifically exempts FLEX Appointed Market Makers from quoting with a minimum bid-offer spread since they are the only FLEX market makers with the requirement to respond to a request for quote. Similarly, the Exchange is proposing that there be no maximum differences between the bid and offer for FLEX Equity Option quotes that, pursuant to proposed Rule 7605(h), a FLEX Market Maker is required to provide in response to a request for quote by a Floor Broker or Options Exchange Official.

[116] *See* proposed Rule 7605(h). Proposed Rule 7605(h) is based on BOX Rule 8510(c)(2). The Exchange notes that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g).

[117] *See* proposed Rule 7605(i). Proposed Rule 7605(i) is based on BOX Rule 7600(d)(3). The Exchange notes that provisions of BOX Rules 7600(d)(1)–(2) were omitted from proposed Rule 7605(i) because those provisions are related to the BOX Book, which is inapplicable to FOO Orders.

[118] *See* proposed Rule 7605(i)(1). The Exchange notes that proposed Rule 7605(i)(1) is based on BOX Rule 7600(d)(3)(i).

[119] *See* proposed Rule 7605(i)(2). The Exchange notes that proposed Rule 7605(i)(2) is based on BOX Rule 7600(d)(3)(ii).

[120] *Id.* Priority in the trading crowd under Rule 7610 is determined first by price and then by sequence. Specifically, on the Trading Floor, the highest (lowest) bid (offer) shall have priority; when two or more bids (offers) represent the highest (lowest) price, priority shall be afforded to such bids (offers) in the sequence in which they were made. If, however, the bids (offers) of two or more Floor Participants are made simultaneously, or if it is impossible to determine clearly the order of time in which they are made, such bids (offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis. The Floor Broker announcing the order is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor from Floor Participants in response to the Floor Broker's bid, offer, or call for a market. Rule 7610 also provides priority provisions where a Floor Broker requests a market in order to fill a large order and the Floor Participants provide a collective response. *See* BOX Rule 7610. The Exchange notes that currently for Non-FLEX Equity Options, priority in the trading crowd is determined without regard to market participant type, including Public Customer.

[121] *See* proposed Rule 7605(i)(3). The Exchange notes that proposed Rule 7605(i)(3) is based on BOX Rule 7600(d)(3)(iii).

[122] The Exchange notes that FOO Order allocation and priority differs from QOO Order provisions related to the priority of orders on the BOX Book. *See* BOX Rules 7600(c)–(e) and (h), and 7600(f)(1) and (3). *See also supra* note 104. In particular, with respect to QOO Order executions BOX Rules 7600(d)(1) and (2) provide priority for better-priced interest on the BOX Book and for Public Customer Orders on the BOX Book at the same price or non-Public Customer Orders ranked ahead of such same-priced Public Customer Orders. As the Exchange noted when it proposed the QOO order type, these priority provisions were designed to provide increased opportunities for orders on the BOX Book to interact with trades on the Trading Floor and to maintain consistency with options trade-through and BOX Book priority rules. *See* Securities Exchange Act Release No. 80720 (May 18, 2017), 82 FR 23657, 23681–82 (May 23, 2017) (SR–BOX–2016–48) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Adopt Rules for an Open-Outcry Trading Floor). These priority provisions are not necessary for FOO Orders because there will be no FLEX Equity Option interest on the BOX Book. The Exchange's existing rules for determining priority of bids and offers from Floor Participants in the trading crowd are based on price-time priority without regard to market participant type, including Public Customer. *See* BOX Rule 7610. This is consistent with floor priority rules for FLEX options on other options exchanges. *See, e.g.,* PHLX Options 8, Section 34(c)(4), NYSE American Rule 904G(e).

[123] *See* proposed Rule 7605(j). Proposed Rule 7605(j) is based on BOX Rule 7600(d)(4).

[124] *Id.*

[125] *See* proposed Rules 7605(i), 7605(k)(1) and (3). Proposed Rules 7605(k)(1) and (3) are based on BOX Rules 7600(f)(1) and (3). The Exchange notes that the proposed FOO Order guarantee differs from the QOO Order guarantee because BOX Rule 7600(f)(3) contains provisions that pertain to the BOX Book, which is inapplicable to FOO Orders.

[126] *See* proposed Rule 7605(k)(2). Proposed Rule 7605(k)(2) is based on BOX Rule 7600(f)(2).

[127] *See* proposed Rule 7605(k)(4). Proposed Rule 7605(k)(4) is based on BOX Rule 7600(f)(4).

[128] The Exchange notes that the proposed FOO Order guarantee differs from the QOO Order

The below examples are designed to illustrate the allocation of the initiating side of a FOO Order.

Example 1—Assume a Floor Broker wishes to execute a FOO Order for 500 contracts. When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 250 contracts each at the same price as the Floor Broker's contra-side. FLEX Market Maker 1 responded first so he will have time priority over FLEX Market Maker 2. Since the FOO Order is for at least 50 contracts, the Floor Broker is entitled to match at least 40% of the initiating side with the Floor Broker's contra-side.

Result: The initiating side of the FOO Order will match against the Floor Broker's contra-side order for the full 500 contracts. After the execution of the FOO Order, because other Floor Participants are entitled to an allocation, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her designee the following allocation of the initiating side of the FOO Order: [129]

1. 200 contracts (40%, or 500 * .40) for the contra-side order submitted by the Floor Broker.
2. 250 contracts for FLEX Market Maker 1 with time priority.
3. Remaining 50 contracts to FLEX Market Maker 2.

Example 2—Assume a Floor Broker wishes to execute a FOO Order for 40 contracts. When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 20 contracts each at the same price as the Floor Broker's contra-side. FLEX Market Maker 1 responded first so he will have time priority over FLEX Market Maker 2. Since the FOO Order is for less than 50 contracts, the Floor Broker is not entitled to a 40% guarantee.

Result: The initiating side FOO Order will match against the Floor Broker's contra-side for the full 40 contracts. After execution of the FOO Order, because other Floor Participants are entitled to an allocation, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her designee with the following allocation of the initiating side of the FOO Order:

1. 20 contracts for FLEX Market Maker 1 with time priority.
2. 20 contracts for FLEX Market Maker 2.
3. The initiating side is filled and the executing Floor Broker will receive no allocation.

Example 3—Assume a Floor Broker wishes to execute a FOO Order for 40 contracts in ABC at 1.05 (initiating side is to sell). When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 20 contracts each. FLEX Market Maker 1 responded first at an improved price to buy 20 at 1.06 so he will have price priority over FLEX Market Maker 2.[130] Since the FOO Order is for less than 50 contracts, the Floor Broker is not entitled to a 40% guarantee.

Result: The Floor Broker will submit two FOO Orders for 20 contracts each: a FOO Order at 1.06 for 20 contracts and a FOO Order at 1.05 for 20 contracts. The initiating side of each FOO Order will match against the Floor Broker's contra-side orders for the full 20 contracts. After execution of the FOO Orders, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her designee with the following allocation of the initiating side of the FOO Orders:

1. FOO Order at 1.06—20 contracts for FLEX Market Maker 1.
2. FOO Order at 1.05—20 contracts for FLEX Market Maker 2.
3. The executing Floor Broker will receive no allocation of either FOO Order.

Additional Provisions

The Exchange also proposes that all orders entrusted to a Floor Broker will be considered Not Held Orders, unless otherwise specified by a Floor Broker's client. A Not Held Order is an order marked ''not held'', ''take time'', or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.[131]

The Exchange further proposes IM–7605–1 which allows Floor Brokers to bring unmatched orders (*i.e.,* the initiating side of a FOO Order) to the Trading Floor in order to seek contra-side interest. Once a contra-side is sourced pursuant to current Rule 7580(e)(2) and proposed Rule 7605(e), the Floor Broker shall submit the two-sided FOO Order to the BOG.[132] The Exchange notes that this provision is identical to IM–7600–4, with the exception of internal rule references, which applies to QOO Orders on the BOX Trading Floor.

The Exchange proposes IM–7605–2 to guide conduct on the floor.[133] In particular, the Floor Broker must disclose all securities that are components of the Public Customer order which is subject to crossing before requesting bids and offers for the execution of all components of the order. Once the trading crowd has provided a quote, it will remain in effect until a reasonable amount of time has passed, there is a significant change in the price of the underlying security, or the market given in response to the request has been improved. In the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of recent trading in the option and in the underlying security, and any other relevant factors.[134] The Participants of the trading crowd who established the market will have priority over all other orders that were not announced in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.[135] When a Floor Broker announces an order to the trading crowd pursuant to Rule 7580(e)(2), it shall be the responsibility of the Floor Participant who established the market to alert the Floor Broker of the fact that the Floor Participant has priority. Complex FOO Orders, Multi-Leg FOO Orders or tied hedge orders on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in proposed Rule 7605 and

guarantee because BOX Rule 7600(f)(3) contains provisions that pertain to the BOX Book, which is inapplicable to FOO Orders.

[129] After execution of the FOO Order, the executing Floor Broker is responsible for providing the correct allocations of the initiating side of the FOO Order to an Options Exchange Official or his or her designee, if necessary, who will properly record the order in the Exchange's system. The executing Floor Broker must provide the correct allocations to an Options Exchange Official or his or her designee, in writing, without unreasonable delay. *See* proposed Rule 7605(j). This is consistent with how QOO Orders are allocated on the Trading Floor today. *See* BOX Rule 7600(d)(4).

[130] Pursuant to Rule 7610, FLEX Marker Maker 1 would have priority over FLEX Market Maker 2 even if FLEX Market Maker 2 responded first because FLEX Market Maker 1 responded at a better price.

[131] *See* proposed Rule 7605(l). Proposed Rule 7605(l) is based on BOX Rule 7600(g). *See also* NYSE Arca Rules 5.34–O and 6.62–O(f). The Exchange notes that NYSE Arca Rule 5.34–O provides a Floor Broker with additional discretion with respect to the number of FLEX contracts to be purchased or sold. The Exchange is not proposing the same discretion for FOO Orders so that the requirements for Floor Brokers handling FOO Orders are the same as handling QOO Orders currently on the Trading Floor.

[132] *See* proposed IM–7605–1. Proposed IM–7605–1 is based on IM–7600–4.

[133] *See* proposed IM–7605–2. Proposed IM–7605–2 is based on IM–7600–1.

[134] The Exchange believes that, by providing the Options Exchange Official with the ability to consider any other relevant factors, Options Exchange Officials will retain the necessary discretion to perform their duties if a new or unforeseen circumstance arises.

[135] *See* BOX IM–7600–1.

IM–7600–2 as appropriate. Floor Participants may not prevent a Complex Order from being completed by giving a competing bid or offer for one component of such order.[136] In determining whether an order satisfies the eligible tied hedge order size requirement, any Complex FOO Order or Multi-Leg FOO Order must contain one leg which, standing alone, is for the eligible order size or greater.[137] A Floor Broker crossing a Public Customer FOO Order with an order that is not a Public Customer Order, when providing for a reasonable opportunity [138] for the trading crowd to participate in the transaction, shall disclose the Public Customer Order that is subject to crossing.

The Exchange proposes to amend Rule 100(b)(3) to provide: ''All Exchange options transactions shall be executed automatically by the Trading Host as provided in applicable Exchange Rules.'' [139] The Exchange notes that Rule 100(b)(3) already applies to Non-FLEX Equity Options. The proposed amendment is to replace specific rule references with a more general reference to avoid any unintended ambiguity and permit the Rule to apply in connection with FLEX Equity Options.

The Exchange proposes to amend Rule 7620, titled Accommodation Transactions, and IM–7620–1 to exclude FLEX Equity Options as defined in proposed Rule 5055.[140] The Exchange notes that Rule 7620(b) currently states that it applies to all options except for option classes participating in the Penny Interval Program under Rule 7260, and IM–7620–1(b) currently states that it applies to all options including those in the Penny Interval Program. The proposed amendments will ensure consistency with proposed Rule 5055(c), which provides that Rule 7620 (Accommodation Transactions) shall not apply to transactions in FLEX Equity Options.

The Exchange has not yet determined the fees for FOO transactions executed on the Trading Floor. Prior to commencing trading of the proposed FOO Orders on the Trading Floor, the Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional message traffic associated with the listing of new series that may result from the introduction of FLEX Equity Options.[141] Additionally, the Exchange has surveillance coverage in place to monitor issues unique to FLEX trading and has developed FLEX-specific surveillance reports to ensure monitoring of compliance with the proposed rules. In addition to the FLEX-specific surveillance, the Exchange believes it has an adequate surveillance program in place and intends to apply the same program procedures to FLEX Equity Options that it applies to the Exchange's other options products, as applicable. FLEX Equity Options products and their respective symbols will be integrated into the Exchange's existing surveillance system architecture and will be subject to the relevant surveillance processes. The Exchange believes that any potential risk of manipulative activity is mitigated by these existing surveillance technologies, procedures, and reporting requirements, which allow the Exchange to properly identify disruptive and/or manipulative trading activity. The Exchange notes that, if the Exchange amends or changes these rules in the future, then the Exchange will review and update the related surveillance coverage and reports as required.

In addition to its own surveillance programs, the Exchange also works with other self-regulatory organizations (''SROs'') and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [142] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange also notes that Financial Industry Regulatory Authority, Inc. (''FINRA''), conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement.[143] Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA, on behalf of the Exchange, coupled with the Exchange's own monitoring comprises a comprehensive surveillance program that is adequate to monitor for issues unique to FLEX trading.

The proposed FLEX Equity Option rules are based predominately on the rules of NYSE Arca. However, the Exchange omitted certain NYSE Arca rules from the proposed rules discussed herein due to differences in the scope and operation of FLEX Option [144] trading at NYSE Arca, compared to the scope and operation of the proposed FLEX Equity Option trading herein. The Exchange is not including NYSE Arca rule provisions that relate to FLEX Index Options as Index Options are not traded on BOX and FLEX Index Options are not proposed herein.[145] In particular, NYSE Arca Rule 5.39–O requires net liquidating equity of $100,000 in an account in which transactions in FLEX Index Options will be conducted. As the Exchange does not trade Index Options, FLEX Index Options are not proposed herein, and the Exchange already imposes minimum net capital requirements,[146] it does not propose additional requirements.

Next, NYSE Arca Rule 5.40–O requires at least $1 million of net liquidating equity in the account of a FLEX Appointed Market Maker. However, FLEX Appointed Market Makers are appointed for FLEX Index Options on NYSE Arca but are not required for FLEX Equity Options.[147] Instead, NYSE Arca only requires FLEX Qualified Market Makers for FLEX Equity Options.[148] And, this subset of Market Makers is not required to have at least $1 million of net liquidating equity. Therefore, the Exchange's proposal does not propose to include additional net liquidating equity requirements for FLEX Market Makers.

[136] The Exchange notes that while a Complex Order could be prevented from being completed by competing bids or offers on multiple components of such orders, competing bids or offers in any one of the multiple components may not prevent a Complex Order from being completed and each one is prohibited.

[137] *See* proposed IM–7605–2(d). The eligible tied hedge order size requirement is determined by the Exchange and may not be smaller than 500 contracts per order. *See* BOX IM–7600–2.

[138] The Exchange is proposing that a minimum response period, which must be between three seconds and five minutes, shall be established by the Exchange and announced via Regulatory Notice. *See* proposed Rule 7605(e)(2).

[139] *See* proposed Rule 100(b)(3).

[140] *See* proposed Rule 7620.

[141] The Exchange will report FLEX Equity Option trades and, if necessary, trade cancels to OPRA.

[142] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[143] The Exchange notes that it is responsible for FINRA's performance under this regulatory services agreement.

[144] The term ''Flexible Exchange Option'' or ''FLEX Option'' means a customized options contract. *See* NYSE Arca Rule 5.30–O(b)(4) *and* CBOE Rule 1.1 (definition of, ''FLEX Option'').

[145] *See* NYSE Arca Rules 5.39–O and 5.40–O.

[146] *See* BOX Rules 8010, 8080, and 10200.

[147] *See* NYSE Arca Rule 5.37–O(a).

[148] *See id.* The Exchange notes that NYSE Arca allows but does not require appointment of two or more FLEX Appointed Market Makers to FLEX Equity Options in lieu of appointing FLEX Qualified Market Makers.

The Exchange notes that Market Makers, including Floor Market Makers and FLEX Market Makers are still subject to several financial requirements, including net liquidating equity in its Market Maker account of not less than $200,000.[149] Additionally, the Exchange believes that the large infrastructure needed to trade as a Market Maker, including their adequacy of capital and operational capacity is such that current Market Makers are likely to have net liquidating equity well beyond $1 million. In fact, another exchange which trades FLEX Options has removed a net liquidating equity requirement while still requiring market makers to maintain net capital sufficient to comply with the requirements of Rule 15c3–1, under the Act.[150] The Exchange has a similar provision, Rule 10200, that requires each Participant subject to Rule 15c3–1 under the Act to comply with the capital requirements prescribed therein among other requirements.[151]

An additional difference in the appointment of FLEX Market Makers is that NYSE Arca appoints FLEX Qualified Market Makers to each FLEX Equity Option of a given class, while the Exchange will qualify FLEX Market Makers for all FLEX Equity Options. The Exchange believes that the structure of its Trading Floor, with one crowd or trading area, will operate more efficiently without qualifying FLEX Market Makers by class.[152] Accordingly, a Floor Broker or Options Exchange Official may request a FLEX Equity Option quote in any class from a FLEX Market Maker. The Exchange notes that FLEX Market Makers will be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605.[153]

Further, the Exchange notes differences between the proposed quoting obligations and those applicable on NYSE Arca. Specifically, a NYSE Arca FLEX Qualified Market Maker may, but shall not be obligated to, enter a FLEX Quote in response to a Request for Quotes on a FLEX Equity Option of the class in which he or she is qualified.[154] However, a FLEX Official on NYSE Arca may call upon FLEX Qualified Market Makers appointed in a class of FLEX Equity Options to make FLEX Quotes in response to a specific Request for Quotes in that class of FLEX Equity Options whenever in the opinion of the FLEX Official the interests of a fair, orderly and competitive market are best served by such action and shall make such a call upon FLEX Qualified Market Makers whenever no FLEX Quotes are made in response to a specific Request for Quotes.[155] The Exchange's proposal differs from NYSE Arca's rule in that FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[156] The Exchange believes that the proposed quoting requirements allow reasonable opportunities for Floor Brokers to get quotes on FOO Orders and notes that the quoting requirements for QOO Orders on the BOX Trading Floor are similar to those proposed for FOO Orders.[157]

Among other NYSE Arca provisions not incorporated by the Exchange, are certain of NYSE Arca's ''Special Terms for FLEX Equity Options.'' [158] Specifically, these special terms include that exercise prices and premiums may be stated in terms of: (i) a dollar amount; (ii) a method for fixing at the time a FLEX Request for Quote or FLEX order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the NYSE Arca on the trade date. The Exchange will only offer exercise prices and premiums in a dollar amount because the additional methods for fixing prices are a matter of individual preference, and the Exchange believes that the requirements of Participants will be met by pricing exercise prices and premiums in a dollar amount.[159]

Another NYSE Arca provision not adopted by the Exchange in this proposal allows discretionary orders where Floor Brokers have discretion regarding the quantity of FLEX contracts traded.[160] The Exchange prohibits discretion regarding quantity, and other terms, including the choice of the class of options to be bought or sold, and whether any such transaction shall be one of purchase or sale except to any discretionary transactions executed by a Floor Market Maker for an account in which he has an interest.[161] The Exchange believes that proposed Rule 7605(l) combined with current Rule 7590, allowing Floor Brokers to have discretion over some terms of a FOO Order such as price and time while not allowing discretion over terms such as quantity, strikes a balance between allowing Floor Brokers to provide full services to clients and preventing erroneous trades based on differing expectations or miscommunications between Floor Brokers and their clients. The Exchange notes that Rule 7600(g) governing QOO Orders is identical to proposed Rule 7605(l) and believes that consistency of handling between QOO Orders and FOO Orders may reduce confusion and increase efficiency on the Trading Floor.

Another NYSE Arca rule not proposed by the Exchange provides that NYSE Arca may designate FLEX Officials.[162] The Exchange is not proposing a similar rule because Rule 100(b)(6) already provides that any Exchange employee or officer designated as an Options Exchange Official will from time to time as provided in these rules have the ability to recommend and enforce rules

[149] *See* BOX Rule 8080(a)(1). Rule 8080 also requires Market Makers to maintain net capital sufficient to comply with the requirements of Rule 15c3–1 under the Act and each Market Maker that is a Clearing Participant shall also maintain net capital sufficient to comply with the requirements of the OCC. *See* BOX Rules 8080(a)(2) and (b). *See also* BOX Rule 8010 (''To qualify for registration as a Market Maker, an Options Participant must meet the requirements established in SEC Rule 15c3–1(a)(6)(i) . . .'').

[150] *See* CBOE Rule 11.6 *and* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR–CBOE–2019–059) (Notice of Filing and Immediate Effectiveness of a proposed rule change to amend certain rules relating to market makers upon migration to the trading system used by CBOE affiliated exchanges).

[151] *See* BOX Rule 10200 (Participants must comply with the additional requirements of the Rule 10200 Series and Market Makers must comply with the minimum financial requirements contained in Rule 8010).

[152] FLEX Market Makers will be required to quote all classes on the Trading Floor pursuant to BOX Rule 8510(e) (In Classes of Option Contracts Other Than Those to Which Appointed). Specifically, whenever a FLEX Market Maker enters the single trading crowd, which includes all classes, Rule 8510(e) requires that he undertake the obligations specified in Rule 8510(d) (In Classes of Option Contracts to Which Assigned—Affirmative Obligations).

[153] *See* proposed Rules 7605(f)–(h) (providing FOO Order quoting obligations). The Exchange notes that current Floor Market Maker quoting obligations and restrictions are detailed in Rule 8510. *See also supra* note 87 (describing the general applicability of the Rule 8000 series and Rules 8500 and 8510 to FLEX Market Makers in their capacity as Market Makers and Floor Market Makers, respectively).

[154] *See* NYSE Arca Rule 5.37–O(b).

[155] *See* NYSE Arca Rule 5.37–O(c).

[156] *See* proposed Rule 7605(h).

[157] *See* BOX Rule 8510(c)(2). The Exchange notes that proposed Rule 7605(h) and current Rule 8510(c)(2) are similar except that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g).

[158] *See* NYSE Arca Rule 5.32–O(f)(2).

[159] The Exchange's belief that the requirements of Participants will be met by stating exercise prices and premiums in a dollar amount is based on conversations with Participants regarding their preferences for stating the terms of exercise prices and premiums.

[160] *See* NYSE Arca Rule 5.34–O.

[161] *See* BOX Rule 7590 and proposed Rule 7605(l).

[162] *See* NYSE Arca Rule 5.38–O.

and regulations relating to trading access, order, decorum, health, safety and welfare on the Exchange. Specifically, Options Exchange Officials have duties enumerated in Rules 100(b)(5), 7610, 7640, and 8510, as well as in proposed Rule 7605 regarding announcement, quoting, and recording of FOO Orders, priority in the trading crowd, disputes on the trading floor, and obligations and restrictions applicable to Floor Market Makers and FLEX Market Makers. The general authority for Options Exchange Officials under these current Exchange Rules will be the same for FLEX Equity Option transactions on the trading floor as it is for Non-FLEX Equity Option transactions.[163] The Exchange believes that Options Exchange Officials will have the authority necessary to enforce the proposed FLEX Equity Option and FOO Order rules such that designation of a unique FLEX Official would be redundant and unnecessary, as the Exchange's existing Options Exchange Officials will have the ability to perform the same functions as a separately designated FLEX Official. Specifically, the duties of FLEX Officials on NYSE Arca are mainly related to their Request for Quotes (''RFQ'') procedure unique to FLEX Options trading on NYSE Arca.[164] The Exchange has elected not to adopt a similar procedure, as discussed below, instead basing the FOO Order process on the QOO Order process already monitored by Options Exchange Officials. Additionally, the Exchange's system is designed to review the terms of a FLEX Equity Option for compliance with the applicable Rules as opposed to being a requirement of an Options Exchange Official to review.[165] Options Exchange Officials will continue to be responsible for monitoring all open outcry activity on the Trading Floor. Therefore, the Exchange will not require a separate official to govern any unique process for FLEX Equity Options. Additionally, the Exchange represents that Options Exchange Officials will receive appropriate training on the terms of FLEX Equity Options and all rules applicable to FLEX Equity Options and FOO Orders, including their responsibility to certify that a Floor Broker has adequately announced a FOO Order to the trading crowd,[166] consistent with the manner in which they are currently trained with respect to QOO Orders.[167] The Exchange further notes that NYSE Arca's rules do not require the exchange to designate FLEX Officials.[168]

As mentioned above, rather than adopt the NYSE Arca RFQ procedure for FLEX Equity Options,[169] the Exchange instead proposes to utilize the current process used on the BOX Trading Floor for QOO Orders with the addition of a minimum time period that a Floor Broker must allow Floor Participants when responding to FOO Orders.[170] The Exchange believes that using the order announcement and responsive quote process for both QOO Orders and FOO Orders on the BOX Trading Floor will result in less confusion and greater efficiency for all BOX Trading Floor Participants.

The Exchange notes that the manner in which the Exchange has proposed rules with respect to announcement of orders and responsive quotes is similar to how CBOE treats its FLEX Options; specifically, CBOE allows a FLEX Order[171] to be represented and executed in a similar manner as a non-FLEX Option.[172] The Exchange believes CBOE's approach is consistent with the Act and proposes to also require Floor Brokers to allow for a reasonable amount of time to participate in FLEX Equity Option transactions. Further, unlike CBOE, the Exchange proposes to establish and announce, via Regulatory Notice, a minimum period of time that a Floor Broker must allow Floor Participants to respond (which amount of time must be between three seconds and five minutes). The Exchange believes that it is unnecessary to specify a specific maximum time period for responses to FLEX orders as Options Exchange Officials on BOX's Trading Floor will be responsible both to enforce the minimum period of time and to ensure that Floor Participants have a reasonable amount of time to respond to FOO Orders.[173] The Exchange notes that the proposed order announcement procedure for FOO Orders is similar to the rules and procedures currently in place for QOO Orders on the BOX Trading Floor.

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in the Rule 12000 Series of the Exchange's current Rules. As described in Rule 12140, the MRVP provides that in lieu of commencing a disciplinary proceeding, the Exchange may, subject to the certain requirements set forth in the Rule, impose a fine, not to exceed $5,000, on any Options Participant, or person associated with or employed by an Options Participant, with respect to any Rule violation listed in Rules 12140(d) or (e) as discussed below. Any fine imposed pursuant to this Rule that (i) does not exceed $2,500 and (ii) is not contested, shall be reported on a periodic basis, except as may otherwise be required by Rule 19d–1 under the Act or by any other regulatory authority. Further, the Rule provides that any person against whom a fine is imposed under the Rule shall be served with a written statement setting forth: (i) the Rule(s) allegedly violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine must be paid or contested, which date shall be not less than twenty-five (25) calendar days after the date of service of such written statement. Rules 12140 (d) and (e) set forth the list of specific Exchange Rules under which an Options Participant or person associated with or employed by

[163] *See* proposed Rule 5055(a)(2).

[164] NYSE Arca Rule 5.38–O provides that ''[a] FLEX Official is responsible for: (1) reviewing the conformity of FLEX Requests for Quotes and FLEX Quotes to the terms and specifications contained in Rule 5.32–O [Terms of FLEX Options]; (2) posting FLEX Requests for Quotes for dissemination; (3) determining the BBO; (4) ensuring that FLEX contracts are executed in conformance with the priority principles set forth in Rule 5.33–O; and (5) calling upon FLEX Qualified Market Makers to make FLEX Quotes in specific classes of FLEX Equity Options as provided in paragraph (c) of Rule 5.37–O.'' *See* NYSE Arca Rule 5.38–O.

[165] *See supra* note 64. The Exchange notes that NYSE Arca Rule 5.38–O(b)(1) provides that it is the responsibility of their FLEX Officials to review the terms of a FLEX order.

[166] *See* proposed Rule 7605(e)(2).

[167] BOX Rules currently provide that the President of the Exchange and his or her designated staff shall be responsible for monitoring, among other things, the activities of Floor Participants and their associated persons and shall establish standards and procedures for the training and qualification of Floor Participants and their associated persons active on the Trading Floor. *See* BOX Rule 100(b)(1).

[168] *See* NYSE Arca Rule 5.38–O(a) (''The Exchange *may* at any time designate an Exchange employee to act as a FLEX Official in one or more classes of FLEX Options [emphasis added] . . . .'').

[169] *See* NYSE Arca Rule 5.33–O.

[170] *See* proposed Rule 7605 and current Rule 7600. The minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice. *See* proposed Rule 7605(e)(2). *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[171] ''FLEX Orders'' are orders submitted in FLEX Options. *See* CBOE Rule 5.70.

[172] *See* CBOE Rule 5.72(d). *See also supra* notes 83 and 98.

[173] *See supra* note 170 and accompanying text. The Exchange notes that while CBOE specifies a maximum time period for responses to FLEX orders, the proposal herein allows Options Exchange Officials to interpret a reasonable amount of time on a case-by-case basis. The Exchange believes that this is appropriate because it reflects the current operation of the Trading Floor and will promote efficient operations without further constraining the announcement process.

an Options Participant may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange. As with all the violations incorporated into its MRVP, the Exchange will proceed under this Rule only for violations that are minor in nature. Any other violation will be addressed pursuant to Rules 12030 (Letters of Consent) or 12040 (Charges).

The Exchange proposes to amend its MRVP to add certain rules relating to FLEX Equity Options to the list of rules eligible for minor rule violation plan treatment by amending Rule 12140. Specifically, the Exchange proposes to amend Rule 12140(e)(3), which covers the failure to properly execute a QOO Order, to include failure to properly execute a FOO Order (proposed Rule 7605).[174] Additionally, the Exchange proposes to amend Rule 12140(e)(9), which covers compliance with quotation requirements for Floor Market Makers as set forth in Rule 8510(c)(2), and is designed to sanction violations thereof, to also include compliance with the quotation requirements for FLEX Market Makers set forth in proposed Rule 7605(h) and sanction violations of such requirements.[175]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [176] in general, and furthers the objectives of Section 6(b)(5) of the Act [177] in particular, in that it is designed 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. Specifically, the Exchange believes the adoption of the proposed rules allowing FLEX Equity Options to trade on the BOX Trading Floor as FOO Orders is consistent with the goals of the Act to remove the impediments to and perfect the mechanism of a free and open market because it will benefit Participants by providing an additional venue for Participants to provide and seek liquidity for customized, large, or complex FLEX option orders. As the Commission noted in its order granting FLEX Equity Option trading on CBOE and what was then the Pacific Stock Exchange (now NYSE Arca), trading FLEX Equity Options on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency.[178] Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing an additional venue for market participants to seek liquidity for customized, large-sized, or complex FLEX option orders. The Exchange believes that providing an additional venue for these FLEX orders will benefit investors, the national market system, Participants, and BOX by increasing competition for order flow and executions, and thereby spur product enhancements and potentially result in lower prices for exchange services related to FLEX Equity Options.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices as the Exchange has reviewed all current surveillance in light of any changes required, including surveillance and technology to detect disruptive or manipulative trading activity for FOO Orders on the Trading Floor, and will modify or add any surveillance as appropriate. As described above, the Exchange will apply its existing surveillance program to FLEX Equity Options and has developed FLEX-specific surveillance reports. The Exchange notes that, if the Exchange amends or changes these rules in the future, then the Exchange will review and update the related surveillance coverage and reports as required.

As described below, the Exchange also believes the proposed changes to Rule 12140(e) are consistent with Section 6(b)(6) of the Act,[179] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The Exchange further believes the proposed changes to Rule 12140(e) are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[180]

General

The Exchange believes that proposed Rule 5055(a) stating that the trading of FLEX Equity Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Rules 5055 and 7605, is consistent with the Act because it will ensure that, except where otherwise provided in Rules 5055 and 7605, the Exchange's existing rules will continue to apply to FLEX Equity Options, which will provide increased consistency for Participants trading FLEX Equity Options and Non-FLEX Equity Options on BOX. The Exchange reiterates that rules which contemplate the operation of or interaction with the BOX Book and the Complex Order Book will not apply to FLEX Equity Options, given that FLEX Equity Options may only be traded as FOO Orders and FOO Orders may not be placed in the BOX Book or the Complex Order Book.[181] Specifically, proposed Rule 5055(a) will specify that the BOX Book and the Complex Order Book shall not be applicable for transactions in FLEX Equity Options and thereby provide clarity for market participants that FLEX Equity Options may only be traded on the Trading Floor. As described above, while electronic trading in FLEX options is available on one market today, the Exchange at this time intends to introduce FLEX Equity Options on the Trading Floor only, consistent with other markets that trade these customized options solely on their

[174] *See* proposed Rule 12140(e)(3). The Exchange notes that adding proposed Rule 7605 for FOO Orders to current Rule 12140(e)(3) is consistent with the existing provision to enforce current Rule 7600 for QOO Orders because Floor Participants have the same general requirements for executing FOO and QOO Orders on the Trading Floor. The Exchange notes further that fines defined under Rule 12140(e)(3) may apply to any failure to properly execute a FOO Order in accordance with applicable provisions of proposed Rule 7605 governing such execution requirements. Proposed Rule 7605(h), however, which relates to a FLEX Market Maker's quoting obligation, is specifically proposed for inclusion in proposed Rule 12140(e)(9).

[175] *See* proposed Rule 12140(e)(9). The Exchange notes that proposed Rule 7605(h) and current Rule 8510(c)(2) are similar except that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g). However, the Exchange believes it is appropriate to include proposed Rule 7605(h) with Rule 8510(c)(2) in the MRVP given the similar nature of the underlying requirement to provide quotations.

[176] 15 U.S.C. 78f(b).

[177] 15 U.S.C. 78f(b)(5).

[178] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving the Trading of Flexibly Structured Equity Options by CBOE and PSE).

[179] 15 U.S.C. 78f(b)(6).

[180] 15 U.S.C. 78f(b)(7) and 78f(d).

[181] *See supra* notes 101 and 104 and accompanying text.

trading floors. The Exchange also believes that providing further detail about rules that shall not apply in proposed Rule 5055(c) is consistent with the Act because it will provide clarity for market participants about existing rules that will not be applicable to FLEX Equity Options on BOX. In particular, specifying that Rules 7600 and 7620 will not apply to FLEX Equity Options will avoid potential confusion about which order types apply to FLEX Equity Options on BOX, as the Exchange is instead proposing Rule 7605 to apply to transactions in FLEX Equity Options. Specifically, Rule 7600 contains priority provisions related to the BOX Book and the Complex Order Book neither of which are applicable to transactions in FLEX Equity Options. The Exchange notes that another exchange excludes similar rules from application to transactions in FLEX Equity Options.[182] However, proposed Rule 5055(c) also specifies that IM–7600–2 and IM–7600–5 shall apply to FLEX Equity Options. The Exchange believes that expressly applying these provisions is consistent with the Act because, although the remainder of Rule 7600 will not apply to FOO Orders, IM–7600–2, and IM–7600–5 relate, respectively, to tied hedge orders and to compliance with Section 11(a)(1) of the Act and should apply to the proposed FOO Orders in the same manner as they currently apply to QOO Orders. Specifically, tied hedge orders are a combination of an option and hedging position that must follow the procedures set forth in IM–7600–2 which is designed to protect investors and the public interest with provisions that limit the types of combinations considered to be tied hedge orders as well as prescribing Floor Broker duties for the handling of such orders. The Exchange believes that expressly applying IM–7600–2 to FOO Orders is consistent with the Act, as this will provide greater consistency between the trading of FLEX Equity Options and Non-FLEX Equity Options on the BOX Trading Floor and reduce the potential for market participant confusion. Next, IM–7600–5 prevents Participants from utilizing the Trading Floor to effect any transactions for their own account, the account of an associated person, or an account with respect to which the Participant or an associated person thereof exercises investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Act (''G Exemption''). IM–7600–5 thereby provides notice to Floor Participants that when utilizing the trading floor to effect transactions in covered accounts, they cannot rely on the G Exemption and must rely on other available exemptions to the prohibition in Section 11(a)(1) of the Act.[183] In this manner, IM–7600–5 provides increased clarity to Floor Participants about their ability to comply with Section 11(a)(1) of the Act and it is therefore consistent with the Act and would protect investors and the public interest to continue to apply this rule to FOO Orders.

The Exchange believes that the definitions proposed in Rule 5055(b) will provide increased clarity to market participants which will protect investors and the public interest by specifying definitions for FLEX Equity Options and Non-FLEX Equity Options, and by specifying that FLEX Equity Option transactions will be governed as proposed in Rule 7605 and shall not be traded other than as FOO Orders, which may only be traded on the Trading Floor. The Exchange believes further that the term ''FLEX Market Maker'' will clarify the difference between Floor Market Makers and FLEX Market Makers, where the latter are qualified for trading FLEX Equity Options and have an obligation to provide quotes in response to FOO Orders.[184] The Exchange also believes that specifying that FLEX Equity Options may not be traded using any other order type or trading mechanism offered by the Exchange will provide increased clarity to Participants that the only means by which the Exchange intends to permit FLEX Equity Options to be traded is via the proposed FOO order type. The Exchange notes that, should it decide to propose additional order types or electronic trading for FLEX Equity Options, it will revise the defined term ''FLEX Open Outcry Order'' accordingly.

The Exchange believes that proposed Rule 5055(d) which specifies that there shall be no trading rotations in FLEX Equity Options is designed 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 because it provides notice to Participants regarding the mechanisms applicable to FLEX trading, which will not include trading rotations due to the customized nature of FLEX Equity Options and the fact that there will be no requirement for specific FLEX Equity Option series to be quoted or traded each day.[185] The Exchange notes that QOO Orders on the Trading Floor can only participate in a trading rotation if entered into the BOX Book and as discussed herein FLEX Equity Options will not be eligible to be placed on the BOX Book.[186] The Exchange also notes that another exchange does not hold trading rotations for FLEX Equity Options.[187]

FLEX Equity Option Terms

The Exchange believes that the terms of FLEX Equity Options pursuant to proposed Rule 5055(e) serve to perfect the mechanism of a free and open market and a national market system because they will permit investors to customize some of the terms of their FLEX Equity Options to implement more precise trading strategies and hedges which may not be possible using Non-FLEX Equity Options.[188] These investors may have improved capability to execute strategies to meet their specific investment objectives by using customized FLEX Equity Options. However, only certain terms are subject to flexible structuring by the parties to FLEX Equity Option transactions, and most of such terms have a specified number of alternative configurations. The Exchange believes that these restrictions are reasonable and designed to further the objectives of the Act and to promote just and equitable principles of trade because limiting FLEX Equity Option terms enables the efficient, centralized clearance and settlement and active secondary trading of opened FLEX Equity Options. Further, these terms are consistent with those currently offered at another exchange.[189]

The Exchange also believes that proposed Rule 5055(e)(1) to prevent FLEX Equity Options and Non-FLEX Equity Options with the same terms from trading concurrently is designed to promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices.[190] In particular, a Non-FLEX Equity Option

[182] *See* NYSE Arca Rules 5.30–O(c) and (d).

[183] *See infra* note 257 and accompanying text (describing the Section 11(a)(1) prohibition and defining ''covered accounts'').

[184] The Exchange notes that Floor Market Makers are not obligated to apply to be FLEX Market Makers, but may elect to do so subject to proposed Rules 5055(k) and 7605(c).

[185] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280, 12284 (March 3, 1993) (SR–CBOE–92–17) (Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Flexible Exchange Options Based on the Nasdaq 100 Index).

[186] *See* BOX Rule 7070(d).

[187] *See* NYSE Arca Rule 5.31–O(b).

[188] *See* proposed Rule 5055(e)(1) (providing that FLEX Equity Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date, and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security).

[189] *See* NYSE Arca Rule 5.32–O.

[190] *See* proposed Rule 5055(e)(1).

trading pursuant to Rule 7600 as a QOO Order has different priority rules than a FOO Order trading pursuant to proposed Rule 7605.[191] Allowing an option with the same terms to trade under both rules concurrently would result in inconsistent order handling and could allow the order priority of QOO Orders to be circumvented. Therefore, the Exchange proposes to prevent this situation by permitting FLEX Equity Option transactions only in options with a different term (exercise style, expiration date, or exercise price) than Non-FLEX Equity Options that otherwise meet the requirements of proposed Rule 5055(e). This is designed to prevent FLEX Equity Options from being surrogates for Non-FLEX Equity Options. Additionally, in the event that a Non-FLEX Equity Option series is added intra-day, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the series is added. In the event that the Non-FLEX Equity Option series is added on a trading day after the position is established, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position as a non-FLEX transaction consistent with the requirements of proposed Rule 5055(f)(1). This proposed rule will prevent an option with the same terms from trading as both a FLEX Equity Option and a Non-FLEX Equity Option concurrently, while providing a narrow exception for closing positions.[192] Further opening trades in such options would be as Non-FLEX Equity Options subject to the Non-FLEX Equity Option trading procedures and rules, including Rule 7600 for Trading Floor transactions.[193] The Exchange believes that enforcing consistent handling and priority for identical and fungible options prevents fraudulent and manipulative acts and practices, and promotes just and equitable principles of trade to protect investors and the public interest by ensuring consistent treatment of these options. The Exchange further believes that providing a narrow exception to permit the closing of a FLEX Equity Option position for the balance of the trading day on which the fungible Non-FLEX Equity Option is added perfects the mechanism of a free and open market and a national market system because it provides investors the ability to close their open FLEX Equity Option positions the same day as the identical Non-FLEX Equity Option is added.[194] As noted herein, these requirements are consistent with those at another exchange.[195]

Further, the Exchange believes that allowing FLEX Equity Options to trade in minimum increments of $0.01 [196] perfects the mechanism of a free and open market and a national market system because it provides investors with increased ability to meet their specific investment objectives and allows for increased opportunities for price improvement through a finer trading increment. The Exchange notes that another exchange currently trades FLEX Equity Options in minimum increments of $0.01.[197]

The Exchange further believes that subjecting FLEX Equity Options to the exercise by exception provisions of Rule 805 of the OCC [198] fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.[199] Specifically, OCC Rule 805 provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. Application of Rule 805 to FLEX Equity Options provides consistency with Non-FLEX Equity Options and prevents confusion in the clearing process with respect to exercise instructions. The Exchange notes that another exchange provides that FLEX Equity Options shall be subject to the exercise by exception provisions of OCC Rule 805.[200]

Position Limits

Position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position and exercise limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that any decision regarding imposing position and exercise limits for FLEX Equity Options must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.[201]

Similar to the other exchanges that trade FLEX Equity Options, the Exchange believes that eliminating position and exercise limits for FLEX Equity Options, while requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in Non-FLEX Equity Options on the same underlying security,[202] removes

[191] For example, the BOX Book will be inapplicable to FOO Orders and thus certain priority provisions applicable to QOO Orders are not applicable to FOO Orders. Specifically, FOO Order priority differs from QOO Order provisions related to the priority of orders on the BOX Book. *See* BOX Rules 7600(c)–(e) and (h). The priority of FOO Orders will be determined by proposed Rules 7605(i) and (k) and BOX Rule 7610.

[192] *See* proposed Rule 5055(f)(2). *See also* proposed Rules 7605(d)(3) and (4). *See* Exchange Act Release Nos. 62321 (June 17, 2010), 75 FR 36130 (June 24, 2010) (SR–NYSEArca–2010–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .01 to Rule 5.32 To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis) *and* 62870 (September 8, 2010), 75 FR 56147 (September 15, 2010) (SR–CBOE–2010–078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis).

[193] *See* proposed Rule 5055(f)(1). *See also* Exchange Act Release Nos. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR–CBOE–2008–115) (Notice of Filing of Amendments No. 1 and 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 1 and 2 Thereto, Relating to FLEX Options Expirations); 60548 (August 20, 2009), 74 FR 43191 (August 26, 2009) (SR–NYSEAmex–2009–44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC Amending the Permissible Expiration Dates for Flexible Exchange Options); 60549 (August 20, 2009), 74 FR 44415 (August 28, 2009) (SR–NYSE–Arca–2009–75) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Permissible Expiration Dates for Flexible Exchange Options); *and* 60549 (September 16, 2009), 74 FR 48619 (September 23, 2009) (SR–Phlx–2009–81) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Option Expirations).

[194] The Exchange notes that investors will be able to close any such positions utilizing Non-FLEX Equity Option trading procedures beginning the next trading day.

[195] *See* NYSE Arca Rule 5.32–O, Commentary .01.

[196] *See* proposed Rule 5055(g).

[197] *See* CBOE Rule 5.4(c)(4). The Exchange notes that minimum increments in percentage terms are not part of this proposal.

[198] *See* proposed Rule 5055(h).

[199] The Exchange notes that Rule 805 of the OCC currently applies to Non-FLEX Equity Options on BOX. *See* BOX Rule 9000(b).

[200] *See* NYSE Arca Rule 5.32–O(f)(4).

[201] The Exchange notes that although no position limits are proposed for FLEX Equity Options, there are several mitigating factors, which include aggregation of FLEX Equity Option and Non-FLEX Equity Option positions that expire on a third Friday-of-the-month and subjecting those positions to position and exercise limits, position reporting, and daily monitoring of market activity.

[202] *See* proposed Rules 5055(i) and (j). *See also* NYSE Arca Rules 5.35–O(a)(iii), (b) and 5.36–O *and*

Continued

impediments to and perfects the mechanism of a free and open market and a national market system because it allows BOX to create a product and market that is an improved but comparable alternative to the OTC market in customized options. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process that exists on a public exchange.

The Exchange believes that the proposed elimination of position and exercise limits for FLEX Equity Options may encourage market participants to transfer their liquidity demands from OTC markets to exchanges and enable liquidity providers to provide additional liquidity to BOX through transactions in FLEX Equity Options. The Exchange notes that the Commission previously approved the elimination of position and exercise limits for FLEX Equity Options, finding that such elimination would allow exchanges ''to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets.'' [203] The Commission has also stated that the elimination of position and exercise limits for FLEX Equity Options ''could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.'' [204]

Additionally, the Exchange believes that requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in Non-FLEX Equity Options on the same underlying security subjects FLEX Equity Options and Non-FLEX Equity Options to the same position and exercise limits on third Friday-of-the-month expirations. These limitations are intended to serve as a safeguard against potential adverse effects of large FLEX Equity Option positions expiring on the same day as Non-FLEX Equity Option positions. The Exchange notes that another exchange has the same requirement.[205]

The Exchange believes that any potential risk of manipulative activity is mitigated by existing surveillance technologies, procedures, and reporting requirements at the Exchange, which allows the Exchange to properly identify disruptive and/or manipulative trading activity. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in ISG the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange also notes that FINRA, conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement.[206] The Exchange also represents that it has reviewed its procedures to detect potential manipulation in light of any changes required for FLEX Equity Options to confirm appropriate surveillance coverage. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and their underlying securities and are designed to protect investors and the public interest by ensuring that the Exchange has an adequate surveillance program in place.

The Exchange believes that proposed Rule 5055(i)(1) further mitigates concerns for potential market manipulation and/or disruption in the underlying markets and thus protects investors and the public interest because position reporting will be required (other than for a Market Maker) and the Exchange may determine that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity Option position in excess of the standard limit for Non-FLEX Equity Options of the same class. The Exchange may, pursuant to its authority under Rule 10130(b), impose additional margin upon the account maintaining such under-hedged position as a safeguard against potential adverse effects of large FLEX Equity Option positions. The Exchange notes that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3–1 to the extent of any margin deficiency resulting from a higher margin requirement imposed by the Exchange. The Exchange also notes that other exchanges currently trading FLEX options have similar position and exercise limits.[207]

Letters of Guarantee and Authorization

Pursuant to proposed Rule 5055(k), the Exchange will require FLEX Market Makers to provide a Letter of Guarantee issued by a clearing member organization and filed with the Exchange specifically accepting financial responsibility for all FLEX Equity Option transactions made by such person as long as such letter has not been revoked under Rule 8070(c).[208] Market Makers that are qualified by the Exchange and have provided such a Letter of Guarantee will be permitted to trade FLEX Equity Options on BOX.[209] The Exchange believes that requiring a Letter of Guarantee specific to FLEX Equity Options protects investors and the public interest because it signifies that the clearing member has specifically accepted financial responsibility for transactions in FLEX Equity Options entered into by the Market Maker which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX Equity Option and Non-FLEX Equity Option transactions. The Exchange notes that another exchange requires a Letter of Guarantee for FLEX transactions.[210]

Pursuant to proposed Rule 5055(l), prior to effecting any transaction in FLEX Equity Options, Floor Brokers are required to provide a Letter of Authorization issued by a clearing member organization and filed with the Exchange specifically accepting financial responsibility for all FLEX Equity Option transactions made by such person, and such letter remains in effect until a written revocation is received by the Exchange.[211] Floor Brokers that have provided such a Letter of Authorization and are qualified by the Exchange will be permitted to trade FLEX Equity Options on BOX.[212] The Exchange believes that requiring a Letter of Authorization specific to FLEX

CBOE Rules 8.35 and 8.42 *and* NYSE American Rules 906G and 907G *and* PHLX Options 8, Section 34(e) and (f).

[203] *See* Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158, 71159 (December 20, 1999) (SR–Amex–99–40) (SR–PCX–99–41) (SR–CBOE–99–59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

[204] *See id.*

[205] *See* NYSE Arca Rule 5.35–O(b)(i).

[206] The Exchange notes that it is responsible for FINRA's performance under this regulatory services agreement.

[207] *See* NYSE Arca Rules 5.35–O(a)(iii), (b) *and* 5.36–O *and* CBOE Rules 8.35 and 8.42 *and* NYSE American Rules 906G and 907G *and* PHLX Options 8, Section 34(e) and (f).

[208] *See* proposed Rule 5055(k).

[209] *See* proposed Rule 7605(c). The Exchange notes that Market Makers are subject to the qualifications in Exchange rules including net capital and financial requirements. *See* BOX Rule 8000 series.

[210] *See* NYSE Arca Rule 5.41–O(a).

[211] *See* proposed Rules 5055(l) and 7605(b).

[212] The Exchange notes that Floor Brokers are subject to registration requirements in Exchange rules including a Floor Broker examination and other factors deemed appropriate by the Exchange. *See* BOX Rule 7550.

Equity Options protects investors and the public interest because it signifies that the clearing member has accepted financial responsibility for transactions in FLEX Equity Options entered into by the Floor Broker which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX Equity Option and Non-FLEX Equity Option transactions. The Exchange notes that another exchange requires a separate Letter of Authorization for Floor Brokers to trade FLEX Equity Options.[213]

FOO Orders

The Exchange believes that the proposed rule change to adopt a new order type [214] for FLEX Equity Option transactions on the BOX Trading Floor is consistent with the Act. The Exchange modeled its proposed rule governing FOO Orders after Rule 7600 applicable to QOO Orders to harmonize current procedures on BOX's Trading Floor, which the Exchange believes will reduce investor confusion and thus remove impediments to and perfect the mechanism of a free and open market and a national market system.[215] Specifically, the proposed elements of a FOO Order are designed to aid Floor Brokers in their duties and to maintain order and structure on the Trading Floor. For example, as with a QOO Order, the rules applicable to FOO Orders will ensure that all FLEX Equity Option transactions executed on the Trading Floor by Floor Brokers are systematized before they are represented to the trading crowd and provide an accurate timestamp of when the order was executed by the Floor Broker.[216] As described above, the main differences from QOO Orders are that FOO Orders will not interact with the BOX Book or the Complex Order Book and that Floor Brokers must allow Floor Participants a minimum period of time to respond to FOO Orders.

Under this proposal, Floor Brokers will continue to allow a reasonable amount of time for Floor Participants to participate in a FOO Order. Additionally, the Exchange will establish and communicate via Regulatory Notice a minimum time that Floor Brokers must provide for Floor Participants to respond to FOO Orders, which amount of time must be between three seconds and five minutes. While other exchanges have adopted RFQ processes for FLEX Equity Options,[217] the Exchange has proposed to follow a similar approach for trading FLEX Equity Options as CBOE, which does not have a different open outcry process for FLEX Option transactions as compared to non-FLEX Option transactions, but does establish a different order announcement process that requires a reasonable amount of time for traders to respond to a FLEX Order.[218] In fact, the Exchange notes that CBOE recently changed its process for FLEX Option transactions from conducting a RFQ process to utilizing the same process as for a non-FLEX Option on its trading floor.[219] In its rule filing, CBOE stated that aligning the open outcry process for FLEX Options with that of non-FLEX Options may reduce confusion regarding how FLEX Orders may trade in open outcry and encourage the submission of FLEX Orders for execution.[220]

The Exchange similarly proposes to align its open outcry process for FLEX Equity Options with that of Non-FLEX Equity Options and to establish a minimum time for responses to FOO Orders. The Exchange also believes that, in addition to the required minimum time, it is appropriate to continue to have Options Exchange Officials determine whether Floor Participants have been provided a reasonable amount of time to respond to a FOO Order, which is consistent with the current procedure on the BOX Trading Floor for QOO Orders.[221] The Options Exchange Official will make this determination on a case-by-case basis based on the current market conditions and trading activity on the Trading Floor.[222] Options Exchange Officials are employees of the Exchange, reporting to the Chief Regulatory Officer, and are trained and qualified to enforce the Exchange's rules. The Exchange believes that Options Exchange Officials will ensure that FOO Orders follow the Exchange's rules, including that FLEX Market Makers are provided a reasonable amount of time to respond.[223] FLEX Market Makers that do not believe a reasonable amount of time to respond was provided may appeal any related determination of an Options Exchange Official to the Exchange's Chief Regulatory Officer.[224] Additionally, Floor Brokers have a general responsibility to use due diligence to cause orders to be executed at the best price or prices available to them in accordance with the Rules of the Exchange.[225] Further, it shall be considered conduct inconsistent with just and equitable principles of trade for any Floor Broker to intentionally disrupt the open outcry process.[226] Thus, the Exchange believes that the proposed process promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed process provides

[213] *See* NYSE Arca Rule 5.41–O(b).

[214] *See* proposed Rule 7605.

[215] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (''After careful review and consideration of the comments received, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.'').

[216] *See* proposed Rule 7605(e). The Exchange notes that in order to execute a FOO Order on the Trading Floor, it must be sent from a Floor Broker's system to the BOG. This requires that the Floor Broker adequately systematized the FOO Order. An order is systematized when a Floor Broker creates an electronic record of the order. As the Exchange described when it originally proposed the QOO order type, in order to execute a QOO Order from the Trading Floor, it must be sent from a Floor Broker's system to the BOG—which requires that the Floor Broker adequately systemized the QOO Order. *See* Securities Exchange Act Release No. 80720 (May 18, 2017), 82 FR 23657, 23682 n.259 (May 23, 2017) (SR–BOX–2016–48) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Adopt Rules for an Open-Outcry Trading Floor).

[217] *See* NYSE Arca Rule 5.33–O *and* PHLX Options 8, Section 34(c) *and* NYSE American Rule 904G.

[218] *See* CBOE Rule 5.72(d)(1) (providing that FLEX Traders have a reasonable amount of time (which amount of time must be between three seconds and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Rule 5.87) to respond with bids and offers). The Exchange notes that PHLX has also taken a similar approach to CBOE. *See* Securities Exchange Act Release No. 97658 (June 7, 2023), 88 FR 38562 (June 13, 2023) (SR–Phlx–2023–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Options 8 Rules).

[219] *See* Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR–CBOE–2019–084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Operation of its Flexible Exchange Options (''FLEX Options'') Pilot Program Regarding Permissible Exercise Settlement Values for FLEX Index Options).

[220] *Id.*

[221] *See supra* note 170 (describing that the minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice).

[222] The Exchange has a Minor Rule Violation Program (''MRVP'') pursuant to Rule 12140 (Imposition of Fines for Minor Rule Violations). The MRVP provides in part that improper vocalization of a trade may result in sanction. *See* BOX Rule 12140.

[223] *See supra* note 170 (describing that the minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice).

[224] *See* BOX Rule 7640(e).

[225] *See* BOX Rule 7570.

[226] *See* BOX IM–7580–4.

substantially similar opportunities for Floor Participants to respond to FOO Orders as an RFQ process while maintaining consistency with existing Exchange processes for transactions on the Trading Floor. As noted herein, the proposed open outcry process is safeguarded by enforcement of the Exchange's rules by Options Exchange Officials. The Exchange again notes that, except for the inclusion of a minimum time period that a Floor Broker must allow Floor Participants to respond to FOO Orders, the proposed open outcry process for FOO Orders is similar to the current process for QOO Orders. Therefore, the Exchange believes the proposal will serve to avoid confusion and increase efficiency on the BOX Trading Floor.

Proposed Rule 7605(b) states that FOO Orders will be limited solely to the Trading Floor. The Exchange believes that limiting FOO Orders to the Trading Floor is consistent with the Act because, due to their unique and customizable nature, FLEX Equity Option transactions are well suited for a trading floor environment where the terms of such options can be effectively negotiated. The Exchange notes that other exchanges limit FLEX Equity Options trading to their respective trading floors.[227] To the extent the Exchange determines to adopt an electronic order type or mechanism for the trading of FLEX Equity Options, it will file a subsequent proposed rule change with the Commission.

Proposed Rule 7605(c) provides that Floor Market Makers in good standing under Rule 8500 (Floor Market Maker) may apply to be FLEX Market Makers. FLEX Market Makers must be registered under Rule 8000, which protects investors and the public interest by ensuring that Market Makers are qualified to perform their duties, including filing an application, demonstrating knowledge of FLEX Equity Options, and providing additional information as the Exchange may consider necessary. The Exchange shall qualify at least three FLEX Market Makers in accordance with a FLEX-specific qualification process prescribed by the Exchange to provide competition for FOO Orders and reasonable opportunities for Participants to get quotes on FLEX Equity Options. The requirement to qualify at least three FLEX Market Makers is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly to Floor Market Makers, FLEX Market Makers will also be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605.[228] Specifically, Rule 8510 provides that transactions of a Floor Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, quoting obligations, restrictions on trading in certain circumstances, and restrictions on conduct related to the allocation of trades. These rules are designed to protect investors and the public interest and are therefore consistent with the Act.

Proposed Rule 7605(d) states that FOO Orders may be Complex FOO Orders or Multi-Leg FOO Orders, including as tied hedge orders, and that these orders may be crossed.[229] However, the priority provisions of Rules 7240(b)(2) and (3) do not apply to Complex FOO Orders or Multi-Leg FOO Orders because there will be no pre-established series and no electronic trading.[230] Further, only FLEX Equity Options on the same underlying and of the same exercise style (American or European) may be part of a Complex FOO Order or Multi-Leg FOO Order. Additionally, if a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a FLEX Equity Option position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be permitted to close its position(s) under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the Non-FLEX Equity Option series is added. If a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the Complex FOO Order or Multi-Leg FOO Order position is established, the holder or writer of a FLEX Equity Option position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be required to execute separate FLEX Equity Option and Non-FLEX Equity Option transactions to close its position(s), such that FLEX Equity Option component leg(s) would trade under the FLEX trading procedures and Non-FLEX Equity Option component leg(s) would trade subject to the non-FLEX trading procedures and rules. These proposed rules are designed to maintain order and structure, to detail the operation of Complex FOO Order and Multi-Leg FOO Order trading on the Trading Floor, and are similar to BOX's current Rule 7600(a)(4). The Exchange is proposing to use similar procedures for the trading of Complex QOO Orders, multi-leg QOO Orders, Complex FOO Orders, and Multi-Leg FOO Orders on the BOX Trading Floor because it will reduce investor confusion and increase efficiency. Additionally, offering order functionality such as Complex FOO Orders, Multi-Leg FOO Orders, and tied hedge orders provides investors with the flexibility and capability to meet their investment and hedging objectives. For these reasons, the Exchange believes that allowing Complex FOO Orders, Multi-Leg FOO Orders, and tied hedge orders removes impediments to and perfects the mechanism of a free and open market and a national market system and is therefore consistent with the Act. The Exchange notes that another exchange allows complex orders[231] and tied hedge[232] orders for FLEX Equity Options.

Another provision designed to maintain order and structure on the Trading Floor is the Exchange's

[227] *See* NYSE American Rule 904G *and* NYSE Arca Rule 5.33–O *and* PHLX Options 8, Section 34(c).

[228] Pursuant to proposed Rule 7605(h), FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market. *See also supra* note 87 (describing the general applicability of the Rule 8000 series and Rules 8500 and 8510 to FLEX Market Makers in their capacity as Market Makers and Floor Market Makers, respectively).

[229] *See* proposed Rule 7605(d), proposed IM–7605–2(d) and current IM–7600–2.

[230] BOX Rules 7240(b)(2) and (3) provide priority provisions for Complex Orders that take into consideration the prices of orders on the BOX Book and the Complex Order Book. Because there will be no BOX Book or Complex Book for Complex FOO Orders, there is no priority of orders on the BOX Book or Complex Book applicable to Complex FOO Orders. This is a distinction from Rule 7600(c), which, for purposes of QOO Orders, excludes the priority rules for Complex Orders contained in Rules 7240(b)(2) and (3) only from multi-leg QOO Orders that are not Complex Orders.

[231] *See* CBOE Rules 5.70(b) and 1.1 (definition of, ''Complex Order'') (providing that the term ''complex order'' means an order involving the concurrent execution of two or more different series in the same underlying security or index (the ''legs'' or ''components'' of the complex order), for the same account, occurring at or near the same time and for the purpose of executing a particular investment strategy with no more than the applicable number of legs (which number CBOE determines on a class-by-class basis)). The Exchange notes that the term ''complex order'' on CBOE includes both Complex Orders and Multi-Leg Orders, as those terms are defined on BOX. *See also* CBOE Rule 5.87 Interpretations and Policies .07 *and* Securities Exchange Act Release No. 93122 (September 24, 2021), 86 FR 54269 (September 30, 2021) (Order Granting Approval of SR–CBOE–2021–041).

[232] *See* PHLX Options 8, Section 34(b)(2) (new citation of PHLX Options 8, Section 34(f)(2) to be implemented prior to August 2024).

proposal that FOO Orders entrusted to a Floor Broker will be considered a Not Held Order, unless otherwise specified by a Floor Broker's client.[233] In particular, considering orders as Not Held will aid Floor Brokers in their duties on the Trading Floor because it provides clarity to both Floor Brokers and their clients regarding how each order is to be handled. Additionally, this rule is consistent with the current handling of QOO Orders on the BOX Trading Floor which will avoid confusion, increase efficiency, and ensure consistent treatment of orders on the Trading Floor. The Exchange further believes that this proposed rule protects investors and the public interest by clarifying order handling duties and expectations between Floor Brokers and Participants.

Additionally, the requirement, in proposed IM–7605–2, that Participants disclose Public Customer Orders subject to crossing with an order that is not a Public Customer Order and all securities that are components of the Public Customer Order is designed to maintain order and structure on the Trading Floor.[234] The rule also clarifies that Complex FOO Orders, Multi-Leg FOO Orders, or tied hedge orders on opposite sides of the market may be crossed subject to limitations.[235] The Exchange believes that providing clarity will remove impediments to and perfect the mechanism of a free and open market and a national market system and that full disclosure will prevent fraudulent and manipulative acts and practices by providing complete information to Participants which may prompt them to improve upon the Floor Broker's proposed crossing price. Additionally, rules governing how long a response is in effect and the effect of an established market on priority create order and structure on the Trading Floor.[236] The Exchange believes that such order and structure protects investors and the public and notes that the same rules apply to QOO Orders.[237]

Proposed Rule 7605(e) is designed to aid Floor Brokers in their duties and to maintain structure and order on the Trading Floor. For example, by providing that a FOO Order is not executed until it is processed by the Trading Host,[238] the Exchange is providing an accurate timestamp of when the order was actually executed by the Floor Broker and not just when it was submitted to the Exchange.[239] Additionally, the process whereby Floor Brokers are required to systematize orders in their systems is designed to provide a complete and accurate audit trail and minimize the occurrence of disputes and regulatory violations.[240] After systematization, a Floor Broker's system will then be required to send an order to the BOG. Further, Floor Brokers are responsible for providing the correct allocations of the initiating side of the FOO Order to an Options Exchange Official or his or her designee, if necessary, after order execution.[241] Floor Brokers will also be required to ascertain that at least one FLEX Market Maker is present in the Crowd Area prior to announcing a FOO Order for execution, which is designed to increase competition for FLEX Equity Option interest on the Trading Floor.[242] The Exchange notes that these rules are substantially similar to those currently in place for QOO Orders on the BOX Trading Floor.[243] The Exchange believes that having substantially similar rules for all orders on the BOX Trading Floor will avoid any potential confusion and increase efficiency on the BOX Trading Floor, which will further the objectives and goals of the Act by helping to prevent fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, and removing impediments to and perfecting the mechanisms of a free and open market and a national market system.

FLEX Market Maker Requirements

The Exchange believes that the proposed rules applicable to FLEX Market Makers are reasonable and will foster cooperation and coordination with persons engaged in facilitating transactions in securities, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, proposed Rules 7605(f), (g) and (h) state: (1) that the minimum size for FLEX Equity Option transactions and quotations shall be 1 contract; (2) that there are no maximum bid to ask spread differentials for FLEX Equity Option quotes; and (3) that FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[244] The Exchange believes that these rules reflect the unique nature of FLEX Equity Option trading which occurs relatively infrequently and with option premiums that can vary widely because any exercise price (in minimum increments of $0.01) and any expiration date on a business day within 15 years of trade date may be traded.[245] The Exchange believes that these requirements strike a balance between the complexity of quoting customized options and the need to ensure that Floor Brokers are able to get a quote for any FLEX Equity Option selected by their clients. Further, these requirements remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that there is a procedure in place to receive a two-sided quote for each FOO Order brought to the BOX Trading Floor. The Exchange notes that these requirements are similar to those currently in place at BOX and another options exchange.[246]

Priority of Orders and Allocation of Trades

The Exchange believes that the proposed rule to provide a Floor Broker with a guarantee or entitlement to cross 40% of the remaining contracts of the original order, after all bids or offers at better prices are filled, with other orders that he is holding,[247] is reasonable and is consistent with the Act. Specifically, proposed Rules 7605(i) and (k) will reward Floor Brokers who bring orders of an eligible size determined by the Exchange but not less than 50 contracts to the Exchange by guaranteeing them the ability to cross 40% of the remaining contracts of those orders after any better priced interest has been filled. The Exchange believes that establishing an eligible size for such guarantee for at least 50 contracts will encourage larger negotiated transactions while providing Floor Participants with a reasonable

[233] *See* proposed Rule 7605(l). *See also* NYSE Arca Rules 5.34–O and 6.62–O(f).

[234] *See* proposed IM–7605–2(a) and (e).

[235] *See* proposed IM–7605–2(d).

[236] *See* proposed IM–7605–2(b) and (c).

[237] *See* BOX IM–7600–1. The Exchanges notes that the portion of IM–7600–1 that references BOX Book Priority is not included in proposed IM–7605–2 because, as discussed, the BOX Book is not available for transactions in FLEX Equity Options.

[238] *See* proposed Rule 7605(e)(2).

[239] FOO Orders will be submitted by Floor Brokers to the BOG, which is a component of the Trading Host. A Floor Broker will have a connection to the BOG giving the Floor Broker the ability to submit FOO Orders to the Trading Host.

[240] In order to execute a FOO Order on the Trading Floor, it must be sent from a Floor Broker's system to the BOG. This requires that the Floor Broker adequately systematized the FOO Order prior to announcing the FOO Order to the trading crowd. *See* proposed Rule 7605(b).

[241] *See* proposed Rule 7605(j).

[242] *See* proposed Rule 7605(e)(3).

[243] *See* BOX Rule 7600(d)(4). *See also* BOX Rule 7580(a).

[244] *See* proposed Rules 7605(f)-(h).

[245] *See* proposed Rule 5055(e).

[246] *See* NYSE Arca Rules 5.32–O(b)(7) and 5.37–O(d) *and* BOX Rule 8510(c)(2).

[247] *See* proposed Rules 7605(i) and (k).

opportunity to participate. The Exchange notes that other options exchanges provide a guarantee for FLEX Equity Options on their trading floors.[248] Additionally, the Exchange currently provides a similar guarantee with respect to QOO Orders executed on the BOX Trading Floor.[249] Allowing a similar guarantee for QOO Orders and FOO Orders is intended to maintain consistency and increase efficiency for the different order types offered on the BOX Trading Floor. The Exchange believes that allowing a guarantee will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by encouraging Floor Brokers to bring orders to the Trading Floor while maintaining the ability of other Floor Participants to participate in floor transactions and compete for such orders.

The Exchange believes that, after the allocation of any bids and offers at better prices and any eligible Floor Broker guarantee, allocating FLEX Equity Option trades between Floor Participants pursuant to the priority provisions of Rule 7610 is reasonable and promotes just and equitable principles of trade. The Exchange notes that, pursuant to Rule 7610, bids and offers are considered in order of the highest bid/lowest offer and priority shall be afforded to such bids and offers in the sequence in which they are made. In situations where the sequence cannot be determined, Floor Participants are treated on an equal basis and receive an equal number of contracts to the extent mathematically possible.[250] The Exchange believes that Rule 7610 is designed to be a fair and impartial method of trade allocation, to promote competition between Floor Participants, and to encourage quick responses of bids and offers at the best available prices. Additionally, consistent and objective trade allocation on the BOX Trading Floor may encourage FLEX Market Makers to provide liquidity which may improve the quality of responses to FOO Orders. The Exchange notes that Rule 7610 is currently applicable to QOO Orders on the BOX Trading Floor[251] and that other exchanges use a similar procedure.[252] Further, if interest remains after Floor Participants that responded with interest receive their allocation, the remaining quantity of the initiating side of the FOO Order will be allocated to the executing Floor Broker. This allocation is designed to further incentivize Floor Brokers after first allowing Floor Participants an opportunity to participate in the trade.

The Exchange believes that the proposed rule change to add certain proposed rules as eligible for a minor rule fine disposition under its MRVP will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to 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. In particular, the Exchange believes that the proposed rule changes to Rule 12140(e) are consistent with Section 6(b)(6) of the Act,[253] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change adds certain rules as eligible for a minor rule fine disposition under the Exchange's MRVP. The Exchange believes violations of proposed Rules 7605 and 7605(h) to be minor in nature and will be more appropriately disciplined through the Exchange's MRVP, and therefore proposes to add them to the list of rules in Rule 12140(e) eligible for a minor rule fine disposition. The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[254] Rule 12140, currently and as amended, does not preclude a Participant or person associated with or employed by a Participant from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding. Further, the Exchange will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into the MRVP. The Exchange notes that these violations are consistent with violations at other options exchanges.[255] The Exchange also notes that the proposed additional violations are similar to minor rule violations already designated in the Exchange's

[248] *See* NYSE American Rule 904G(e)(iii) (providing that ''[i]n the case of FLEX Equity Options only and notwithstanding [Rules 904G(e)(i) and (ii)], whenever the Submitting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Submitting Member will be permitted to execute the contra side of the trade that is the subject of the Request for Quotes, to the extent of at least 40% of the trade'') *and* PHLX Rule Options 8, Section 34(c)(5) (''In the case of FLEX equity options only and notwithstanding [Section 34(c)(4)], whenever the Requesting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Requesting Member will be permitted to execute the contra side of the trade that is the subject of the RFQs, to the extent of at least 40% of the trade, provided the order is a Public Customer order or an order respecting the Requesting Member's firm proprietary account.''). *See also* NYSE American Rule 904G(f) (''A Submitting Member may effect crossing transactions only on public customer orders or orders respecting the Submitting Member's firm proprietary account.''). The Exchange notes differences between the guarantees on NYSE American and PHLX and the guarantee on BOX. First, neither PHLX nor NYSE American set an eligible order size and BOX proposes an eligible order size, determined by the Exchange, of 50 or more contracts. Further, both NYSE American and PHLX require the contra side of a crossing order subject to the 40% guaranteed allocation to be either a Public Customer order or an order respecting the submitting firm's proprietary account whereas BOX does not impose such limitations. The Exchange notes that not limiting contra side participant types is consistent with current BOX rules on the Trading Floor for QOO Orders.

[249] *See* BOX Rule 7600(f).

[250] *See* BOX Rule 7610. The Exchange notes that priority in the trading crowd is determined without regard to market participant type, including Public Customer.

[251] The Exchange notes that split-price priority applicable to QOO Orders is not applicable to FOO Orders. Split-price priority allows a Participant effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment, even if there are orders in the book at the same price. BOX Book will not be applicable to FOO Orders and thus there is no need for split-price priority. Accordingly, the Exchange does not propose to adopt provisions analogous to Rule 7600(i), IM–7600–6, or IM–7600–7 in proposed Rule 7605.

[252] CBOE Rule 5.72(d)(2) provides that FLEX Orders are allocated only to responses from the trading crowd pursuant to Rules 5.85(a)(1) and (2)(C). Rule 5.85(a)(1) provides that bids and offers with the highest bid and lowest offer have priority and (2)(C) establishes priority between in-crowd market participants at the same price. The Exchange believes that these rules are similar to BOX Rule 7610 and are appropriate for FLEX Equity Option trading. *But see* NYSE Arca Rules 5.30–O(d) (providing that priority and order allocation procedures for open outcry do not apply to FLEX Equity Options) and 5.33–O (providing a RFQ procedure for FLEX transactions including priority provisions that provide priority in certain instances to FLEX Qualified Market Makers and limited priority to the submitting firm if it has matched or improved the market on NYSE Arca). As discussed herein, the Exchange does not believe that a RFQ procedure is necessary for FLEX Equity Option trading on BOX. Similarly, CBOE does not have a specific open outcry procedure for FLEX transactions. *See* CBOE Rule 5.72(d) (providing that a submitting FLEX Trader may represent and execute a FLEX Order on the Exchange's trading floor in the same manner as a Trading Permit Holder may represent and execute an order for a non-FLEX Option).

[253] 15 U.S.C. 78f(b)(6).

[254] 15 U.S.C. 78f(b)(7) and 78f(d).

[255] *See, e.g.,* NYSE Arca Rule 10.12(h) *and* CBOE Rule 13.15(g)(9).

MRVP for activities related to the Trading Floor.

In requesting the proposed additions to BOX Rule 12140(e), the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a Letter of Consent if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations relating to FOO Orders and FLEX Market Maker quoting of FLEX Equity Options where a more formal disciplinary action may not be warranted or appropriate. Finally, the Exchange believes that the proposed rule change will reinforce its surveillance and enforcement functions.

The Exchange believes that amending Rule 7620 and IM–7620–1 to exclude FLEX Equity Options is consistent with proposed Rule 5055(c) which provides that Rule 7620 shall not apply to transactions in FLEX Equity Options. The amendment is designed to provide clarity by adding FLEX Equity Options to the exclusion list in Rule 7620 and IM–7620–1 to clarify that neither Cabinet orders nor Sub-Penny Cabinet orders will be available for FLEX Equity Options. The Exchange believes further that this amendment will protect investors and the public interest by removing potential ambiguity between Rule 7620 and proposed Rules 5055 and 7605 and is therefore consistent with the Act.

Lastly, the amendment of Rule 100(b)(3) to remove specific rule references is designed to clarify that all Exchange options transactions shall be executed automatically by the Trading Host as provided in applicable Exchange Rules. The Exchange believes that this amendment will protect investors and the public interest by removing potential ambiguity created by a list of specific rule references that may not be complete and is therefore consistent with the Act.

The Exchange reiterates that FLEX Equity Options are currently traded on four other options exchanges currently conducting options trading.[256] Therefore, the proposed rules perfect the mechanism of a free and open market and protect investors and the public interest by establishing FLEX Equity Options and FOO Orders on the BOX Trading Floor, which would provide market participants an additional execution venue to provide and seek liquidity for their customized orders, thereby increasing the opportunities to execute such orders to the benefit of all market participants.

Section 11(a) Analysis

The proposed rule change is consistent with Section 11(a) of the Act and the rules thereunder. Section 11(a)(1) of the Act[257] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts''), unless an exception applies. Sections 11(a)(1)(A)–(I) of the Act[258] and the rules thereunder provide certain exemptions from this general prohibition, including the exemption set forth in Rule 11a2–2(T) under the Act.[259] The proposed rule change would not limit in any way the obligation of a Participant, while acting as a Floor Broker or otherwise, to comply with Section 11(a) of the Act or the rules thereunder.[260]

As described above, the Exchange proposes to apply existing IM–7600–5 to FLEX Equity Options,[261] which states that a Participant shall not utilize the Trading Floor to effect any transaction for a covered account by relying on the G Exemption.[262] Because no covered account transactions utilizing the Trading Floor may rely on the G Exemption, Participants utilizing the Trading Floor to effect transactions for covered accounts may only rely upon other exemptions to the Section 11(a)(1) prohibition.[263]

In addition to statutory exemptions, Rule 11a2–2(T) under the Act,[264] known as the ''effect versus execute'' rule, provides Participants with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits a Participant, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated Participant, acting as a Floor Broker, to execute transactions on the Exchange. To comply with Rule 11a2–2(T)'s conditions, the initiating Participant: (i) must transmit the order from off the Trading Floor; (ii) may not participate in the execution of the transaction once the order has been transmitted to the Participant performing the execution;[265] (iii) may not be affiliated with the executing Participant; and (iv) with respect to an account over which the Participant or an associated person has investment discretion, neither the Participant nor an associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that Participants utilizing FOO Orders on the Trading Floor may comply with the

[256] FLEX options are currently traded on CBOE, NYSE American, NYSE Arca, and PHLX.

[257] 15 U.S.C. 78k(a)(1).

[258] 15 U.S.C. 78k(a)(1)(A)–(I).

[259] 17 CFR 240.11a2–2(T).

[260] A Floor Broker may utilize the Trading Floor to effect a transaction for a covered account only pursuant to Rule 7540 and for purposes of liquidating error positions.

[261] *See* proposed Rule 5055(c) (stating that IM–7600–5 shall apply to FLEX Equity Options).

[262] 15 U.S.C. 78k(a)(1)(G). Section 11(a)(1)(G) of the Act provides an exemption from the general prohibition in Section 11(a)(1) of the Act for any transaction for a member's own account, provided that: (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities; and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange. *See also* 17 CFR 240.11a1–1(T) (setting forth requirements for relying on the G Exemption).

[263] Section 11(a) of the Act and the rules thereunder provide other exemptions to the Section 11(a)(1) prohibition, including, for example, the ''effect versus execute'' exemption (as discussed below), the exemption for transactions by a dealer acting in the capacity of a market maker, and the exemption for transactions to offset a transaction made in error.

[264] 17 CFR 240.11a2–2(T).

[265] This prohibition also applies to associated persons of the initiating Participant. The Participant may, however, participate in clearing and settling the transaction.

conditions of Rule 11a2–2(T) under the Act.[266]

Rule 11a2–2(T)'s first requirement is that orders for covered accounts be transmitted from off the Trading Floor. The Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[267] Floor Brokers will receive matched or unmatched orders either via telephone, or electronically to the Floor Broker's order entry mechanism. A Participant could submit an order for a covered account from off the Trading Floor to an unaffiliated Floor Broker for representation on the Trading Floor and use the ''effect versus execute'' exemption (assuming the other conditions of the rule are satisfied). A Participant that submits a FOO Order for a covered account utilizing the Trading Floor, and who wishes to rely on the ''effect versus execute'' exemption, must submit the order from off the Trading Floor.

Second, Rule 11a2–2(T) requires that neither the initiating Participant nor an associated person of the initiating Participant participate in the execution of the transaction at any time after the order for the transaction has been transmitted. At no time following the submission of a FOO Order utilizing the Trading Floor will the submitting Participant or any associated person of such Participant acquire control or influence over the result or timing of the order's execution.[268] In addition, once a Floor Broker submits a FOO order to the BOG for execution, neither the Floor Broker nor anyone else may alter the terms of the order.[269] Moreover, when a Floor Broker submits a FOO Order for execution, the order will be executed in accordance with Exchange rules and based on market conditions of when the order is received by the Trading Host.[270] Accordingly, a Participant and its associated persons would not participate in the execution of a FOO Order submitted for execution utilizing the Trading Floor.

Third, Rule 11a2–2(T) requires that the order be executed by a Participant that is not associated with the Participant initiating the order. To rely on the exemption in Rule 11a2–2(T), a Participant could submit a FOO Order for a covered account from off the Trading Floor to an unaffiliated Floor Broker. A Participant relying on Rule 11a2–2(T) could not submit a FOO Order for a covered account to its ''house'' Floor Broker on the Trading Floor for execution. If a Participant sends its FOO Order from off the floor to an affiliated Participant that is on the floor, who then directs the order into the Trading Host for execution, the off-floor Participant may not rely on the exemption in Rule 11a2–2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating Participant or an associated person thereof exercises investment discretion, neither the initiating Participant nor any associated person may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[271] Participants and their associated persons trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that other exchanges currently offer FLEX option trading on their respective trading floors. The Exchange believes that the proposed rules will allow BOX to compete with these other exchanges and provide an additional execution venue for these transactions for market participants. Thus, the proposed rules will promote intermarket competition by increasing the number of exchanges where FLEX Equity Options can be traded. The proposal also promotes intermarket competition by providing another alternative, exchange markets, to bilateral OTC trading of options with flexible terms. Exchange markets, in contrast with bilateral OTC trading, are centralized, transparent, and have the guarantee of the OCC for options traded.

Additionally, the Exchange believes that this proposal does not impose an undue burden on intramarket competition because Participants are not required to trade FLEX Equity Options and those that choose to trade FLEX Equity Options may do so on the same terms and pursuant to the same rules. To the extent that the proposed rules differ for FLEX Market Makers and Floor Brokers, these differences are based on the unique roles and obligations of Floor Brokers (*e.g.,* systemization, announcement, and allocation of orders) and FLEX Market Makers (*e.g.,* quoting in response to orders). Additionally, any burden on intramarket competition imposed by providing Floor Brokers with a guaranteed trade allocation on certain trades is mitigated by the facts that FLEX Market Maker quotes at better prices are allocated first and FLEX Market Makers may still participate after the Floor Broker's guarantee at the same price. Further, the Exchange notes that Floor Brokers source liquidity for the contra side of a two-sided order that may otherwise be unavailable on the Trading Floor due to the size and complexity of the order. The proposed

[266] The Commission has previously found that the all-electronic transactions effected through the Trading Host are consistent with the requirements of Section 11(a) of the Act and Rule 11a2–2(T) thereunder. *See, e.g.,* Securities Exchange Act Release Nos. 72848 (August 14, 2014), 79 FR 49361 (August 20, 2014) (SR–BOX–2014–16) (order approving the Exchange's proposal to adopt new trade allocation algorithms for matching trades at the conclusion of the PIP and the COPIP); and 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (order granting the Exchange's application for registration as a national securities exchange). The Commission has also found that transactions effected by Participants through the Trading Floor are consistent with the requirements of Section 11(a) of the Act and Rule 11a2–2(T) thereunder. *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (order approving the Exchange's proposal to adopt rules for an open-outcry Trading Floor).

[267] *See, e.g.,* Securities Exchange Act Release Nos. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release''); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release'').

[268] A Participant may cancel or modify the FOO Order, or modify the instructions for executing the FOO Order. The Commission has stated that the nonparticipation requirement is satisfied under such circumstances so long as the modifications or cancellations are also transmitted from off the floor. *See* 1978 Release, *supra* note 267, at 11547 (stating that the ''non-participation requirement does not prevent initiating members from canceling of modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[269] *See* proposed Rule 7600(c).

[270] *See* proposed Rule 7600(a).

[271] In addition, Rule 11a2–2(T)(d) requires that, if a Participant or associated person is authorized by written contract to retain compensation in connection with effecting transactions for covered accounts over which the Participant or associated person thereof exercises investment discretion, the Participant or associated person must furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the Participant or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 267, at 11548 (stating that ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

guarantee provides greater opportunity for the contra-side to participate in the trade which facilitates Floor Brokers in their generation of contra-side interest and increases the likelihood of securing sufficient contra-side interest. FLEX Market Makers do not construct two-sided orders and thus are not provided a guarantee. However, FLEX Market Makers may benefit from the Floor Broker guarantee as the guarantee is designed to incentivize Floor Brokers to bring their FLEX orders to the BOX Trading Floor where FLEX Market Makers have the ability to interact with these orders. The Exchange also does not believe the proposed rule change imposes any undue burden on intramarket competition between Participants that trade FLEX Equity Options and those that trade Non-FLEX Equity Options. As described above, the Exchange has proposed to use substantially similar procedures for the trading of QOO Orders and FOO Orders, with any modifications designed to reflect the unique nature of customizable FLEX Equity Options. The Exchange notes further that proposed Rules 5055(e)(1) and (f) would prevent any FLEX Equity Options and Non-FLEX Equity Options with the same terms from trading concurrently on the Exchange, with a narrow exception for closing only orders.[272]

Lastly, the proposed MRVP changes are not intended to address competitive issues but rather are concerned solely with updating the Exchange's MRVP in connection with the proposed rules eligible for a minor rule fine disposition. Further, the proposal relates to the Exchange's role and responsibilities as a self-regulatory organization and the manner in which it disciplines its Participants and associated persons for violations of its rules. The Exchange believes the proposed MRVP changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

Based on the foregoing, the Exchange believes that the proposed rule changes discussed herein do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[272] *See supra* note 64.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[273] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1), 6(b)(5), 6(b)(6), and 6(b)(7)[274] of the Exchange Act. Section 6(b)(5) of the Exchange Act[275] requires, among other things, that the rules of a national securities 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, and 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. Section 6(b)(5) also requires that the rules of a national securities exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. Further, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Exchange Act,[276] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Exchange Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange, and with Sections 6(b)(6) and 6(b)(7) of the Exchange Act,[277] which require a national securities exchange, among other things, to provide fair procedures for the disciplining of members and persons associated with members. The Commission also finds that the proposed rule change, as amended, is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d–1(c)(2) under the Exchange Act,[278] which governs minor rule violation plans.[279]

Specifically, the Exchange is proposing to trade FLEX Equity Options on the BOX Trading Floor. FLEX Equity Options allow market participants to customize certain specified terms (*i.e.,* expiration date, exercise price and exercise style) of an equity option. The Exchange states that FLEX Equity Options provide an alternative to trading customized option in the OTC market and provides the ''advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement and a centralized counterparty clearing agency.'' [280] The Exchange also states that its proposal will allow it to compete with other exchanges that currently trade FLEX Equity Options and provide an alternative trading venue for market participants.

The trading procedures and functionality applicable to FLEX Equity Options will be similar to the trading procedures and functionality for trading Non-FLEX Equity Options on the BOX Trading Floor, with certain exceptions, among others, to account for the customized nature of FLEX Equity Options and that there is no BOX Book or Complex Order Book available for FLEX Equity Options.[281] The BOX proposal is also consistent with the FLEX Equity Options rules of other national securities exchanges that trade FLEX Equity Options.[282] The

[273] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[274] 15 U.S.C. 78f(b)(5), (6), and (7).

[275] 15 U.S.C. 78f(b)(5).

[276] 15 U.S.C. 78f(b)(1).

[277] 15 U.S.C. 78f(b)(6) and (b)(7).

[278] 17 CFR 240.19d–1(c)(2).

[279] The Commission has also previously stated in approving other exchanges FLEX rules for equity options that, consistent with Section 11A, such rules should encourage fair competition among broker dealers and exchange markets by allowing exchanges to compete with the over-the-counter (''OTC'') market in customized options. *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (Order approving the listing and trading of FLEX Options).

[280] *See* Amendment No. 3, *supra* note 10, at 57. *See also,* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving the Trading of Flexibly Structured Equity Options by CBOE and PSE). The Options Clearing Corporation clears exchange traded FLEX options as well as non-FLEX options.

[281] *See* Amendment No. 3, *supra* note 10, at 13 and fn.40.

[282] In its proposal, BOX described the FLEX rules of other exchanges that its proposed FLEX rules are based on and where there were differences described those and the reasons for those differences. For example, the Exchange stated it primarily based its rules on NYSE Arca but omitted rules concerning index options because it is only proposing FLEX Equity Options. *See* Amendment No. 3, *supra* note 10, at 46–54 fn.136–65. BOX also has represented that its proposal to trade FLEX Equity Option on its exchange floor in a similar manner as it trades non-FLEX options is consistent

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Commission believes that the Exchange's proposal is designed to provide investors with a tailored or customized product for equity options that can be traded on the Exchange that may be more suitable to their investment needs. For the reasons described in more detail below, the Commission believes the proposal is consistent with the Exchange Act.[283]

A. FLEX Equity Option Requirements (Proposed Rule 5055)

The trading procedures applicable to FLEX Equity Options will be subject to many of the same rules that apply to the trading of Non-FLEX Equity Options on the Exchange, unless otherwise provided by proposed Rules 5055 and 7605.[284] Among other things, proposed Rule 5055 will provide the framework under which FLEX Equity Options would be eligible for trading on the Exchange, including, but not limited to, the terms under which FLEX Equity Options would be available (detailing the underlying security, type, exercise price and style, and expiration date), the form of settlement, fungibility provisions, minimum quoting and trading increments, exercise by exception requirements, position and exercise limits, as well as letters of guarantee and authorization. As stated in its filing, the only means by which the Exchange intends to permit FLEX Equity Options to be traded is via the proposed FOO Order type on the Exchange's Trading Floor.[285] The Exchange has represented that the BOX Book and the Complex Order Book shall not be available for transactions in FLEX Equity Options because, consistent with other exchanges' FLEX rules, there will be no pre-established series and no electronic trading of FLEX Equity Options.[286] As a result, the Exchange notes that those Exchange rules that contemplate the operation of or interaction with the BOX Book and the Complex Order Book will not apply to FLEX Equity Options, given that FLEX Equity Options may only be traded as FOO Orders on the Trading Floor and FOO Orders may not be placed in the BOX Book or the Complex Order Book.[287] Additionally, the Exchange has proposed that Options Exchange Officials have the same duties and ability to enforce rules applicable to the trading of FLEX Equity Options as they do for all other activity on the Trading Floor.[288]

As proposed, FLEX Equity Options will only be permitted in puts and calls that do not have the same exercise style (American or European), same expiration date and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security, provided the option is otherwise eligible for trading.[289] The Exchange states that its system enforces these requirements and that its system will reject an order in a FLEX Equity Option if the order received has the same exercise style (*i.e.,* American or European), same expiration date and same exercise price as a Non-FLEX Equity Option available for trading in the same underlying security.

Additionally, Exchange proposed Rule 5055(f) titled ''Fungibility of FLEX Equity Options'' addresses the listing of a FLEX Equity Option before a Non-FLEX Equity Option with the same terms is listed for trading and the treatment of such outstanding FLEX Equity Option position after the Non-FLEX option is listed. Under Rule 5055(f) if, at any time in the future, an options series with identical terms to an open FLEX options position is listed for trading as a Non-FLEX Equity Option: (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Options series, and (ii) any further trading in the series would be as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules.[290] In the event a Non-FLEX Equity Options series is added intra-day, however, the holder or writer of such FLEX Equity Options position would be permitted to close such position under the FLEX trading procedures only against another closing only FLEX Equity Option position for the balance of the trading day on which the Non-FLEX series was added.[291] In addition, once the same Non-FLEX Option series is added on a trading day after the FLEX Equity is established it can only be closed out by a non-FLEX transaction except, as described above, for the limited intra-day exception. As the Commission has previously stated, it has been concerned about FLEX Options acting as a surrogate for trading in standardized Non-FLEX Options given the protections for investors in the Non-FLEX Options market, and the fungibility provisions could help to mitigate some of these concerns.[292] The Commission continues to believe that requiring FLEX Equity Options to be fungible with their Non-FLEX counterparts could help to address the surrogacy concerns and ensure that market participants can avail

with how FLEX orders are traded on the Cboe Exchange, Inc. (''CBOE''). See Amendment No. 3, *supra* note 10, at 25 fn.75.

[283] The Commission received one comment in support of the proposed rule change. The public comment file for SR–BOX–2023–20 is available on the Commission's website at *https://www.sec.gov/comme-2023-20/srbox202320.htm.*

[284] The Exchange represented that it conducted a thorough review of its existing Rules to ensure that proposed Rule 5055(a) accurately reflects the application of the Exchange's Non-FLEX Equity Option Rules to FLEX Equity Options, as well as those Non-FLEX Equity Option Rules that would not apply to FLEX Equity Options. As an example of Non-FLEX Equity Rules that would apply, the Exchange referenced BOX Rule 7080 relating to trading halts. The Exchange stated that an Options Exchange Official may halt trading in any option contract in the interests of a fair and orderly market (factors that shall be considered are enumerated in Rule 7080(a)(1)) and will halt trading in FLEX Equity Options when Non-FLEX Equity Options on the same underlying security are halted. The Exchange further represented that the BOX Trading System is also designed to enforce the Exchange's trading halt rules such that a trading halt in Non-FLEX Equity Options will result in a trading halt in FLEX Equity Options on the same underlying security. *See* Amendment No. 3, *supra* note 10, at 10. As an example of Non-FLEX Equity Rules that would not apply, the Exchange referenced proposed Rule 7605 allowing FLEX Equity Options to only trade as FOO Orders and stating that FLEX Equity Options may not trade via the PIP, COPIP, Facilitation and Solicitation Auctions, or as Qualified Contingent Cross, Complex QCC, Customer Cross, Complex Customer Cross Orders, and any new order type not explicitly included within the FLEX Equity Option rules. *See* Amendment No. 3, *supra* note 10, at 10–11 fn.32.

[285] *See* Amendment No. 3, *supra* note 10, at 10 and proposed Rule 5055(b)(3). Rule 5055(b)(3) specifically states that FLEX Equity Options may not be traded using any other order type or trading mechanism offered by the Exchange. In its proposal the Exchange, consistent with the requirement that FLEX Equity Options can only trade on the Exchange as a FOO Order specified those order types and trading mechanisms that cannot be used for the trading of FLEX Equity Options. *See* Amendment No. 3, *supra* note 10, at 10–11 fn.24 and 32.

[286] *See* Amendment No. 3, *supra* note 10, at 11. The Exchange notes that proposed Rule 5055(e)(1) and (f)(1) provide that FOO orders must have different terms for orders on the BOX Book, and, therefore, could not execute against interest on the BOX Book. *See id.* at fn.96. This is consistent with the rules of other exchanges that currently trade FLEX Equity Options and that also do not have a separate FLEX customer order book. *See* Securities Exchange Act Release No. 90457, (November 18, 2020), 85 FR at 75077 (November 24, 2020).

[287] *See* Amendment No. 3, *supra* note 10, at 11 and proposed Rule 5055(a)(1).

[288] *See* Amendment No. 3, *supra* note 10, at 11–12 and proposed Rule 5055(a)(2).

[289] *See* Amendment No. 3, *supra* note 10, at 12 and proposed Rule 5055(e)(1) and (2)(i) Additionally, under proposed Rule 5055(e)(3) FLEX Equity Options must be physically settled by delivery of the underlying security.

[290] *See* proposed Rule 5055(f)(1).

[291] *See* proposed Rule 5055(f)(2). This is because in the event a Non-FLEX Equity Option with identical terms to a FLEX Equity Option is listed intraday, OCC could not net the positions in the contracts until the next day potentially leading to assignment risk. *See* Securities Exchange Act Release No. 62321 (June 17, 2010), 75 FR at 36131 (June 24, 2010).

[292] *See* Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (Order providing for fungibility of FLEX and non-FLEX option series with same terms upon listing of non-FLEX option series).

themselves of the protections provided in the standardized market.

Finally, proposed Rules 5055(i) and 5055(j) details position and exercise limits, respectively, for FLEX Equity Options.[293] Under proposed Rule 5055(i)(1) and (j) FLEX Equity Options will not be subject to position and exercise limits [294] except, as long as the options positions remain open, positions in FLEX Equity Options that expire on the third Friday-of-the-month shall be aggregated with positions in Non-FLEX Equity Options on the same underlying security and shall be subject to the position limits for Non-FLEX Equity Options in current BOX Rule 3120 and the exercise limits set forth in in current BOX Rule 3140.[295] The Exchange has proposed that rather than be subject to FLEX position limits, each Participant (other than a Market Maker) that maintains a position on the same side of the market in excess of the standard position limit under BOX Rule 3120 for Non-FLEX Equity Options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity Options position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account.[296] Furthermore, whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity Options position in excess of the stand position limit for Non-FLEX Equity Options of the same class, the Exchange may, pursuant to its authority under Rule 10130(b), impose additional margin upon the account maintaining such under-hedged position.[297]

The enhanced reporting requirements and margin provisions as well as the requirement that FLEX Equity Options that expire on an Expiration Friday be subject to, and aggregated with, standard non-FLEX Options position and exercise limits, are the same position and exercise limit requirements that apply under the rules of the four other exchanges that currently trade FLEX Equity Options.[298] It is therefore appropriate for BOX to have the same position and exercise limit rules for FLEX Equity Options as these other exchange markets. As the Commission has previously stated, while it cannot entirely rule out the potential for future adverse effects on the securities markets for the FLEX Equity Options or component securities underlying FLEX Equity Options, the continued enhanced market surveillance of positions should help the Exchange to take the appropriate action in order to avoid any manipulation or market risk concerns.[299] The Commission expects BOX, as it has the other exchanges trading FLEX Equity Options, to take prompt action including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in FLEX Equity Options and the underlying stocks, should any unanticipated adverse market effects develop.

Accordingly, based on the above, the Commission finds that proposed Rule 5505 is consistent with the Exchange Act, and Section 6(b)(5) of the Exchange Act [300] in particular, and its requirements that the rules of a national securities exchange be reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission notes that Rule 5055 is modeled on FLEX rules previously approved by the Commission.[301]

B. FLEX Open Outcry (''FOO'') Orders

In its filing, the Exchange proposed to introduce a new order type, the FLEX Open Outcry Order, to facilitate FLEX Equity Options transactions on the BOX Trading Floor.[302] The FOO Order is modeled on a current order type utilized on the Trading Floor, the Qualified Open Outcry (''QOO'') Order.[303] As proposed, FOO Orders must consist of options with terms defined in Rule 5055, are limited solely to FLEX Equity Options, the BOX Trading Floor, and may only be entered by Floor Brokers registered under Rule 7550.[304] As discussed in more detail above, the Exchange proposed to allow Floor Market Makers in good standing under Rule 8500 to apply to be FLEX Market Makers, and the Exchange will qualify at least three FLEX Market Makers.[305] All FLEX Market Makers will be required to quote all classes when present on the Trading Floor.[306] Similar to Non-FLEX Equity Options, a Floor Broker will have to ascertain that at least one FLEX Market Makers is present in the Crowd Area prior to announcing a FOO Order for execution, as this requirement, among others, is designed to increase the opportunity for another Floor Participant to compete to interact with orders on the Trading Floor.[307] Furthermore, as discussed in

[293] *See* proposed Rule 5055(i).

[294] Proposed Rule 5055(j) states that exercise limits for FLEX Equity Options are the same as position limits under proposed Rule 5055(i).

[295] *See* proposed Rule 5055(i)(1) and (2).

[296] *See* proposed Rule 5055(i)(1).

[297] *See* proposed Rule 5055(i)(1). Proposed Rule 5055(i)(1) also states that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3–1 to the extent of any margin deficiency resulting from a higher margin imposed by the Exchange.

[298] *See, e.g.,* NYSE Arca Rule 5.35–O(b) and (b)(i).

[299] The Commission stated that the monitoring of accounts should provide the Exchanges with information necessary to determine whether to impose additional margin and/or assess capital charges and also determine whether a large position could have an undue effect on the underlying market and to take the appropriate action. *See* Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158 (December 20, 1999) (Order approving the elimination of position and exercise limits for FLEX Equity Options). *See also* Securities Exchange Act Release No. 42346 (January 18. 2000), 65 FR 4010 (January 25, 2000) (Order approving the elimination of position and exercise limits for FLEX Equity Options).

[300] 15 U.S.C. 78f(b)(5).

[301] *See* Amendment No. 3, *supra* note 10, at 10–25.

[302] *See* Amendment No. 3, *supra* note 10, at 24; *see also* proposed Rule 7605.

[303] *See* Amendment No. 3, *supra* note 10, at 24–25 fn.73–74. The Exchange cites to CBOE, which allows a FLEX Order to be represented to and executed in the same manner as a non-FLEX Order. *See* CBOE Rule 5.72(d).

[304] *See* Amendment No. 3, *supra* note 10, at 25. *See* proposed Rule 7605(a) and (b). Proposed Rule 7605(b) is based on BOX Rule 7600(a)(2) and (3) and NYSE Arca Rule 5.41–O(b), but the Exchange proposed to add a clarifying statement that prior to announcement of the FOO Orders to the trading crowd, Floor Brokers must record all FOO Orders pursuant to Rule 7580(e)(1).

[305] *See* Amendment No. 3, *supra* note 10, at 26. For the qualification requirements, *see* Amendment No. 3, *supra* note 10, at 26 fn.80.

[306] *See* Amendment No. 3, *supra* note 10, at 27 fn.81. *See also* proposed Rule 7506(c). The Exchange notes that ''all FLEX Market Makers will be subject to the Rule 8000 series (as Market Makers) and Rules 8500 and 8510 (as Floor Market Makers) in their entirety, and such FLEX Market Makers will be required to be familiar with and abide by those Exchange rules where applicable.'' According to the Exchange, the provision in proposed Rule 7605(c) providing that FLEX Market Makers are subject to the obligations and restrictions of Rule 8510 ''unless otherwise specified'' in Rule 7605 is simply intended to allow for certain obligations and restrictions unique to FLEX Market Makers' trading in FLEX Equity Options that differ from those Market Makers' activities in Non-FLEX Equity Options. *See* Amendment No. 3, *supra* note 10, at 26 fn.79. The Exchange also noted that nothing in proposed Rule 7605 is intended to eliminate or reduce any generally applicable Market Maker or Floor Market Maker obligations, such as a Market Maker's obligation to maintain a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. *Id.* The Exchange also noted, *supra* note 89, that each Floor Market Maker is currently qualified for all classes of Non-FLEX Equity Options on the Trading Floor.

[307] *See* Amendment No. 3, *supra* note 10, at 27 fn.82–83. *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (Order Approving a

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more detail above, FOO Orders may be brought to the Trading Floor as matched or unmatched orders with a Floor Broker receiving the matched or unmatched order via the same methods that Floor Brokers receive QOO orders on the Trading Floor.[308]

As discussed in more detail above, the Exchange also proposed that FOO Orders may be either Complex Orders (''Complex FOO Orders'') or Multi-Leg Orders (''Multi-Leg FOO Orders'') as defined in Rule 7240(a)(7) and (10), with no more than the applicable number of legs, as determined by the Exchange and communicated to Participants, including tied hedge orders defined in IM–7600–2.[309] The Exchange notes that the priority provisions of Rule 7240(b)(2) and (3) will not apply to Complex FOO Orders or Multi-Leg FOO Orders because there is no Complex Order Book for such orders, nor is there a BOX Book for individual FLEX Equity Options components of the Complex FOO Orders or Multi-Leg FOO Orders.[310] Furthermore, under proposed Rule 7605(d), each option leg of a Complex FOO Order or Multi-Leg FOO Order must be for a FLEX Equity Option series with the same underlying security and must have the same exercise style (*i.e.,* American or European).[311]

1. Announcement, Representation, and Execution of a FOO Order

Proposed Rule 7605(e) covers the announcement and representation of FOO Orders on the BOX Trading Floor and the Exchange states that the rules are consistent with the Non-FLEX Trading Floor Requirements.[312] All FOO Orders must be announced to the trading crowd, as provided in Rule 7580(e)(2), prior to the FOO Order being submitted to the BOG, and an Options Exchange Official will certify that the Floor Broker adequately announced the FOO Orders to the trading crowd.[313] The Exchange specifies that a FOO Order is not deemed executed until it is processed by the Trading Host, and once a Floor Broker submits the FOO Order to the BOG, there will be no opportunity for the submitting Floor Broker (or anyone else) to alter the terms of the FOO Order.[314] The Exchange states that the proposed floor interaction practice is consistent with the process of QOO Orders, but that FOO Orders are not eligible for the BOX Book or Complex Order Book, there is no NBBO, and that Floor Brokers, under Rule 7605(e)(2), must allow Floor Participants a minimum period of time (between three seconds and five minutes) that qualifies as a reasonable amount of time to respond to FOO Orders.[315] The Exchange further notes that a reasonable amount of time for Floor Participants to respond to a FOO Order, the same as a QOO Order, will be interpreted on a case-by-case basis by an Options Exchange Official based on current market conditions and trading activity on the Trading Floor, provided, for FOO Orders, the minimum threshold between three second and five minutes must be satisfied.[316]

Proposed Rule 7605(f) provides for the minimum size for a FLEX Equity Options transaction and quotation to be one contract,[317] and proposed Rule 7605(g) provides that there is no maximum differences between the bid and offer for FLEX Equity Option quotes.[318] Finally, proposed Rule 7605(h) states that FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[319]

2. Allocation and Priority of FOO Orders

Proposed Rule 7605(i) details the allocation process for FOO Orders, specifically that the FOO Order will be matched by the Trading Host on the contra-side of the FOO Order, regardless of whether the contra-side order submitted by the Floor Broker is ultimately entitled to receive an allocation pursuant to proposed Rule 7605(i)(1)–(2).[320] Specifically: (i) if the FOO Order satisfies the provisions of proposed Rule 7605(k), the executing Floor Broker is entitled to 40% of the remaining quantity of the initiating side of the FOO Order;[321] (ii) a FLEX Market Maker that responds with interest when the Floor Broker announces the FOO Order to the trading crowd, as specified in Rule 7580(e)(2) and proposed Rule 7605(e), are allocated; (iii) if multiple Floor Participants respond with interest, priority in the Trading Crowd is established pursuant to Rule 7610; and (iv) if interest remains after Floor Participants that respond with interest receive their allocations, but the remaining quantity of the initiating side of the FOO Order will be allocated to the executing Floor Broker.[322] These are similar allocation and priority provisions to those already established and applicable to responses for QOO Orders on the BOX Trading Floor.[323]

Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (''BOX Open-Outcry Trading Floor Approval Order'').

[308] *See also* Amendment No. 3, *supra* note 10, at 28.

[309] *See* Amendment No. 3, *supra* note 10, at 29.

[310] *See id.*

[311] *See* Amendment No. 3, *supra* note 10, at 29–30. *See* proposed Rule 7605(d). Proposed Rule 7605(d)(3) provides that if a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Orders would be permitted to close its position(s) under the FLEX trading procedures against closing only FLEX Equity Option position for the balance of the trading day on which the Non-FLEX Equity Option series is added. Additionally, if a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the Complex FOO Order or Multi-Leg FOO Order position is established, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Orders or Multi-Leg FOO Orders would be required to execute separate FLEX Equity Option and Non-FLEX Equity Option transaction to close its position(s), such that FLEX Equity Option component leg(s) would trade under the FLEX trading procedures and Non-FLEX Equity Option component leg(s) would trade subject to the non-FLEX trading procedures and rules. *See* proposed Rule 7605(d)(3) and (4).

[312] *See* Amendment No. 3, *supra* note 10, at 31; *see also supra* note 105 for a discussion on differences between the FOO announcement and representations versus QOO orders.

[313] *See* Amendment No. 3, *supra* note 10, at 33; *see* proposed Rule 7605(e). The Exchange specifies that all transactions on the Trading Floor must be processed by the Trading Host and that Floor Brokers are responsible for handling all orders in accordance with Exchange priority rules. *See* Amendment No. 3, *supra* note 10, at 32.

[314] *See* Amendment No. 3, *supra* note 10, at 33. The Exchange notes that once the FOO Order is announced to the trading crowd, the Floor Broker must submit the FOO Order to the BOG for processing by the Trading Host without undue delay, providing that the executing Floor Broker must give Floor Participants a reasonable amount of time to respond, per Rule 100(b)(5). The ''reasonable amount of time'' will be established by the Exchange, and announced via Regulatory Notice, as a minimum period of time (between three seconds and five minutes). *See* Amendment No. 3, *supra* note 10, at 33–34.

[315] *See id.* There are no pre-established, outstanding series in FLEX Options so they are not continuously quoted. Therefore, there is no NBBO in FLEX Options. *See* Amendment No. 3, *supra* note 10, at 34. This is the same as how FLEX Equity Options are traded on other exchanges. *See* Securities Exchange Act Release No. 90457, (November 18, 2020), 85 FR at 75077 (November 24, 2020).

[316] *See* Amendment No. 3, *supra* note 10, at 35. *See also* Amendment No. 3, *supra* note 10, at 34–35 fn.105 for factors an Options Exchange Official takes into account in determining reasonable time.

[317] *See* Amendment No. 3, *supra* note 10, at 35. *See also* proposed Rule 7605(f).

[318] *See* Amendment No. 3, *supra* note 10, at 35. *See also* proposed Rule 7605(g).

[319] *See* Amendment No. 3, *supra* note 10, at 36. *See also* proposed Rule 7605(h).

[320] *See* Amendment No. 3, *supra* note 10, at 36. The Exchange states that if no Floor Participant, other than the executing Floor Broker, is entitled to an allocation, then no further steps are necessary.

[321] *See* proposed Rule 7605(i)(1).

[322] *See* proposed Rule 7605(i)(3).

[323] *See* BOX Rule 7600(c)–(e), (h), (f)(1), and (3). *See* Amendment No. 3, *supra* note 10, at 37 fn.114. The Exchange states that the differences between

As proposed, after the execution of the FOO Order, the executing Floor Broker will be responsible for providing the correct allocation to the initiating side of the FOO Order to an Options Exchange Official (or designees) who will properly record the order on the Exchange's system.[324] Additionally, the Exchange proposed to allow for a participation guarantee for certain FOO Orders executed by Floor Brokers on the Trading Floor, specifically when a Floor Broker holds an option order of eligible size [325] or greater, the Floor Broker is entitled to cross 40% of the remaining contracts of the original order, after all bids or offers at better prices are filled, with other orders that the Floor Broker is holding.[326] The Exchange states that nothing in the proposed rule is intended to prohibit a Floor Broker from trading more than their entitlement if the other Participants of the trading crowd do not choose to trade the remaining portion of the order.[327]

3. Additional Provisions

As described in more detail above, the Exchange has proposed additional provisions related to FOO Orders and conduct on the Trading Floor in relation to FLEX Equity Options.[328] Specifically, the Exchange proposed that all order entrusted to a Floor Broker will be considered ''Not Held Orders,'' unless otherwise specified by a Floor Broker's client.[329] Additionally, proposed IM–7605–1 allows Floor Brokers to bring unmatched orders to the Trading Floor in order to seek contra-side interest, and once the contra-side is sourced pursuant to Rule 7580(e)(2) and 7605(e), the Floor Broker shall submit the two-sided FOO Order to the BOG.[330] The Exchange states that this provision is essentially identical to IM–7600–4, which applies to QOO Orders on the BOX Trading Floor. Lastly, the Exchange proposes IM–7605–2 to guide conduct on the floor.[331] Specifically, IM–7605–2 provides: (i) the Floor Broker must disclose all securities that are components of the Public Customer Order which is subject to crossing before requesting bids and offers for the execution of all components of the order; [332] (ii) once the trading crowd has provided a quote, it will remain in effect until a reasonable amount of time has passed, or there is a significant change in the price of the underlying security, or the market given in response to the request has been improved; [333] (iii) the Participant of the trading crowd who establishes the market will have priority over all other orders that were not announced in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market; [334] (iv) Complex FOO Orders, Multi-Leg FOO Orders, or tied hedge orders on opposite sides of the market may be crossed, provided that the Floor Brokers holding such orders proceeds in the manner described in proposed Rule 7605 and IM–7600–2 as appropriate; [335] and (v) a Floor Broker crossing a Public Customer Order with an order that is not a Public Customer Order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclosure the Public Customer Order that is subject to crossing.[336]

4. FOO Order Summary

Accordingly, the Commission finds that the establishment of the new FOO Order, including the rules for the FLEX Market Makers, the announcement, representation and execution of FOO Orders, allocation of FOO Orders, and additional provisions, is consistent with the Exchange Act, and Section 6(b)(5) of the Exchange Act [337] in particular, and its requirements that the rules of a national securities exchange be reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission notes that the FOO Order is modeled on the previously approved QOO Order,[338] but tailored for FLEX Equity Options. The Commission believes that the proposed rules governing Complex FOO Orders and Multi-Leg FOO Orders are designed to protect the priority of interest on the BOX Book and the Complex Order Book because a Complex FOO or Multi-Leg FOO Order must be comprised solely of FLEX Equity Option series.[339] Under the proposal, FLEX Equity Options will be permitted only in puts and calls that do not have the same exercise style, same expiration date, and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security.[340] If any component leg of a Complex FOO or Multi-Leg FOO Order becomes a Non-FLEX Equity Option series, the proposed rules establish procedures for holders and writers of positions in the component leg(s) of the order to close their positions.[341] Additionally, the

the FOO and QOO priority provisions are due to the fact that there is no FLEX Equity Options interest on the BOX Book, and thus those Exchange provisions are not necessary. *Id.* Furthermore, the Exchange notes that the existing rules for determining priority of bids and offers from Floor Participants in the trading crowd are based on price-time priority without regard to market participant type, including Public Customer. *See* BOX Rule 7610. According to the Exchange, this is consistent with floor priority rules for FLEX options on other options exchanges. *See, e.g.,* PHLX Options 8, Section 34(c)(4) and NYSE American Rule 904G(e).

[324] *See* proposed Rule 7605(j). *See* Amendment No. 3, *supra* note 10, at 38. The Exchange notes that the executing Floor Broker must provide the correct allocation to an Options Exchange Official (or designee) in writing, without unreasonable delay. *Id.*

[325] The Exchange may determine, on an option by option basis, the eligible size for an order on the Trading Floor to be subject to the guarantee as long as the eligible order size is not less than 50 contracts. For Complex FOO Orders or Multi-Leg FOO Orders, the eligible order size requirement must contain one leg alone which is the eligible order size or greater. *See* proposed Rule 7605(k)(2) and Amendment No. 3, *supra* note 10, at 38–39.

[326] *See* proposed Rule 7605(i), (k)(1), and (3). *See* Amendment No. 3, *supra* note 10, at 38–39.

[327] *See* proposed Rule 7605(k)(4). *See* Amendment No. 3, *supra* note 10, at 39.

[328] *See* Amendment No. 3, *supra* note 10, at 42.

[329] *See* proposed Rule 7605(l). *See* Amendment No. 3, *supra* note 10, at 42.

[330] *See* proposed IM–7605–1. *See* Amendment No. 3, *supra* note 10, at 42.

[331] *See* Amendment No. 3, *supra* note 10, at 42.

[332] *See* proposed IM–7605–2(a). *See also* Amendment No. 3, *supra* note 10, at 42.

[333] *See* proposed IM–7605–2(b). *See* Amendment No. 3, *supra* note 10, at 43. Proposed IM–7605–2(b) specifies that in the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of recent trading in the option and in the underlying security, and any other relevant factors.

[334] *See* proposed IM–7605–2(c). *See* Amendment No. 3, *supra* note 10, at 43 and BOX IM–7600–1. Proposed IM–7605–2(c) also specifies that when a Floor Broker announces an order to the trading crowd pursuant to Rule 7580(e)(2), it is the responsibility of the Floor Participant who established the market to alert the Floor Broker of the fact that the Floor Participant has priority.

[335] *See* proposed IM–7605–2(d). *See* Amendment No. 3, *supra* note 10, at 43. Proposed IM–7605–2(d) also provides that Floor Participants may not prevent a Complex FOO Order from being. completed by giving a competing bid or offer for one component of such order. Additionally, when determining whether an order satisfies the eligible tied hedge order size requirement, any Complex FOO Order or Multi-Leg FOO Order must contain one leg which, standing alone, is for the eligible order size or greater.

[336] *See* proposed IM–7605–2(e). *See* Amendment No. 3, *supra* note 10, at 44.

[337] 15 U.S.C. 78f(b)(5).

[338] *See* Amendment No. 3, *supra* note 10, at 25. *See also* BOX Open-Outcry Trading Floor Approval Order, *supra* note 307.

[339] *See* proposed Rule 7605(d)(1).

[340] *See* proposed Rule 5505(e)(1).

[341] If a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a position in the component leg(s) resulting from

Continued

Commission believes that the FLEX Market Maker rules are consistent with those of the non-FLEX trading floor, including the requirement for one FLEX Market Maker to be present in the Crowd Area prior to announcing an order for execution.[342] Furthermore, the Commission believes that the announcement, representation, execution, and allocation of FOO Orders is consistent with previously approved QOO orders and the deviations from the existing QOO Order rules is consistent with the Exchange Act due to the unique nature of the FLEX Equity Options as proposed.[343]

C. Regulation and Oversight

The Commission notes that surveillance is important, among other things, to detect and deter fraudulent and manipulative trading activity as well as other violations of Exchange rules and the federal securities laws. The Exchange has represented that it has reviewed its current surveillance in light of any changes required, including surveillance and technology to detect disruptive or manipulative trading activity for FOO Orders on the Trading Floor, and will modify or add any surveillance as appropriate.[344] The Exchange also states it has surveillance in place to monitor issues unique to FLEX trading and has developed FLEX-specific surveillance reports to ensure monitoring of compliance with the proposed rules. In addition to the above, the Exchange states that it will apply its existing surveillance program, that applies to other options traded on the Exchange, to FLEX Equity Options.[345] Finally, the Exchange has represented that if it amends or changes the FLEX rules in the future it will review and update the related surveillance coverage and reports as needed.[346] Furthermore, as noted above, the Exchange represents that it believes it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional message traffic associated with the listing of new series that may result from the introduction of FLEX Equity Options.[347]

The Exchange also believes the proposed changes to Rule 12140(e) (Imposition of Fines for Minor Rule Violations), which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction are consistent with Sections 6(b)(6).[348] The Exchange further believes that Rule 12140(e) is designed to provide a fair procedure for the disciplining of members and persons associated with members and is, therefore, consistent with Sections 6(b)(7) and 6(d) of the Exchange Act.[349] The Exchange proposes to amend Rule 12140(e) to add certain violations of FLEX Rules concerning FOO Orders and FLEX Market Makers to be eligible for minor rule fines under the Exchange's MRVP.[350] Specifically, the Exchange proposes to modify BOX Rule 12140 to specify that any Floor Participant that fails to properly execute a FOO Order under new Rule 7605 shall be subject to the fines detailed in Rule 12140(e)(3) and that any FLEX Market Maker that fails to comply with the quotation requirement under new Rule 7605(h) shall be subject to the fines detailed in Rule 12140(e)(9).[351] The Exchange states that the rules that it proposes to include in Rule 12140(e) are comparable to the rules at other options exchanges.[352] The proposed additional violations are also similar to minor rule violations already designated in the Exchange's MRVP for activities related to the trading of Non-FLEX Equity Options on the Trading Floor.[353]

The Exchange's proposed regulatory structure raises no new regulatory issues. Accordingly, the Commission finds that the Exchange's proposed regulatory structure, including the Exchange's proposed application of its existing rules along with the proposed rule changes and the updates to its surveillance program to monitor issues unique to FLEX trading are consistent with the Exchange Act and, in particular, the Section 6(b)(5) requirement that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.[354] The Commission also finds that the Exchange's proposed regulatory structure is consistent with the requirements of Section 6(b)(1) of the Exchange Act, which requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Exchange Act and the rules and regulations thereunder, and the rules of the Exchange,[355] and with Sections 6(b)(6) and 6(b)(7) of the Exchange

such Complex FOO Order or Multi-Leg FOO Orders would be permitted to close its position(s) under the FLEX trading procedures against closing only FLEX Equity Option position for the balance of the trading day on which the Non-FLEX Equity Option series is added. If a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the Complex FOO Order or Multi-Leg FOO Order position is established, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Orders or Multi-Leg FOO Orders would be required to execute separate FLEX Equity Option and Non-FLEX Equity Option transactions to close its position(s), such that FLEX Equity Option component leg(s) would trade under the FLEX trading procedures and Non-FLEX Equity Option component leg(s) would trade subject to the non-FLEX trading procedures and rules. *See* proposed Rules 7605(d)(3) and (4).

[342] *See* Amendment No. 3, *supra* note 10, at 27. *See also* BOX Open-Outcry Trading Floor Approval Order, *supra* note 307. In the Open-Outcry Trading Floor Approval Order, the Commission notes that ''this requirement . . . [is] designed to increase the opportunities for another Floor Participant to compete to interact with the orders on the Trading Floor.'' *Id.* at 37149.

[343] *See* Amendment No. 3, *supra* note 10, at 31 and 33. *See also* BOX Open-Outcry Trading Floor Approval, *supra* note 307, at 37151. In that Order, the Commission noted that the ''automated provided by the BOG and the Trading Host may benefit the Exchange, its members and users, and other market participants by, for example, producing more accurate and timely trade reports and should ensure compliance with trade-through and priority rules.'' Furthermore, the Commission noted that it ''believes that the functionality provided by the BOG and the Trading Host is reasonably designed to assist Floor Participants in complying with applicable Commission rules and regulations, and with the Exchange's Rules. *Id.*

[344] *See* Amendment No. 3, *supra* note 10, at 45 and 58.

[345] *See id.*

[346] The Commission notes that the Exchange, in its proposal, has represented that it works with other self-regulatory organizations (''SROs'') and exchanges on intermarket surveillance related issues. Through the Exchange's participation in the Intermarket Surveillance Group (''ISG'') the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. In addition, the Exchange stated that the Financial Industry Regulatory Authority, Inc. (''FINRA''), conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange stated its belief that the cross-market surveillance performed by the Exchange or FINRA, on behalf of the Exchange, coupled with the Exchange's own monitoring comprises a comprehensive surveillance program that is adequate to monitor for issues unique to FLEX trading.

[347] *See* Amendment No. 3, *supra* note 10, at 45. The Exchange noted that it will report FLEX Equity Options trade and, if necessary, trade cancels to OPRA. *See supra* note 141.

[348] *See* Amendment No. 3, *supra* note 10, at 85.

[349] *See* Amendment No. 3, *supra* note 10, at 85–86.

[350] *See* Amendment No. 3, *supra* note 10, at 55–56.

[351] *See* Amendment No. 3, *supra* note 10, at 56.

[352] *See* Amendment No. 3, *supra* note 10, at 86 fn.247 (citing to NYSE Arca Rule 10.12(h) and CBOE Rule 13.15(g)(9)).

[353] *See* Amendment No. 3, *supra* note 10, at 86.

[354] *See* 15 U.S.C. 78f(b)(5).

[355] 15 U.S.C. 78f(b)(1).

Act,[356] which require an Exchange to provide fair procedures for the disciplining of members and persons associated with members.

Finally, the Commission finds that the proposed changes to the Rule 12140(e) are consistent with the public interest, the protection of investors, or otherwise in furtherance of the purpose of the Exchange Act, as required by Rule 19d–1(c)(2) under the Exchange Act,[357] which governs minor rule violation plans. The Commission believes that BOX Rule 12140 is an effective way to discipline a member for a minor violation of a rule. The Commission believes that the Exchange's proposal to add rules related to FOO Orders and FLEX Market Makers to the list of rules that are eligible for minor rule violation plan treatment is consistent with the Exchange Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities.

In approving the proposed changes to the Rule 12140(e), the Commission in no way minimizes the importance of complying with the Exchange's rules and all other rules subject to fines under BOX Rule 12140. The Commission believes that a violation of any SRO's rules, as well as Commission rules, is a serious matter. However, BOX Rule 12140 provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under BOX Rule 12140 or whether a violation requires formal disciplinary action.

D. Section 11(a) of the Exchange Act

Section 11(a)(1) of the Exchange Act[358] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception applies.[359] Sections 11(a)(1)(A)–(I) of the Act[360] and the rules thereunder provide certain exemptions from this general prohibition, including the exemption set forth in Rule 11a2–2(T) under the Act.[361] As described above,[362] the Exchange proposes to apply existing IM–7600–5 to FLEX Equity Options,[363] which states that a Participant shall not utilize the Trading Floor to effect any transaction for a covered account by relying on the G Exemption.[364] Because no covered account transactions utilizing the Trading Floor may rely on the G Exemption, Participants utilizing the Trading Floor to effect transactions for covered accounts may only rely upon other exemptions to the Section 11(a)(1) prohibition.

The Exchange states that it believes the proposed rule change is consistent with Section 11(a) of the Act and rules thereunder.[365] The Exchange states that the proposed rule change would not limit in any way the obligation of a Participant, while acting as a Floor Broker or otherwise, to comply with Section 11(a) or the rules thereunder.[366] In its filing, the Exchange conducted an analysis detailing how Participants utilizing FOO Orders on the Trading Floor may comply with the requirements of Rule 11a2–2(T).[367] The Commission previously stated that Participants utilizing the Trading Floor may comply with the conditions of Rule 11a2–2(T).[368] The Commission further notes that each member of the Exchange is responsible for ensuring that its conduct is in compliance with the requirements of Section 11(a) of the Act and the rules promulgated thereunder.

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 3, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BOX–2023–20 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–BOX–2023–20. 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 (*https://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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

[356] 15 U.S.C. 78f(b)(6) and (b)(7).

[357] 17 CFR 240.19d–1(c)(2).

[358] 15 U.S.C. 78k(a)(1).

[359] Section 11(a) of the Act and the rules thereunder provide other exemptions to the Section 11(a)(1) prohibition, including, for example, the ''effect versus execute'' exemption, the exemption for transactions by a dealer acting in the capacity of a market maker, and the exemption for transactions to offset a transaction made in error. The ''effect versus execute'' exemption, set forth in Rule 11a2–2(T) under the Exchange Act, permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. *See* 17 CFR 240.11a2–2(T).

[360] 15 U.S.C. 78k(a)(1)(A)–(I).

[361] 17 CFR 240.11a2–2(T).

[362] *See* Amendment No. 3, *supra* note 10, at 88.

[363] *See* proposed Rule 5055(c) (stating that IM–7600–5 shall apply to FLEX Equity Options).

[364] 15 U.S.C. 78k(a)(1)(G). Section 11(a)(1)(G) of the Act provides an exemption from the general prohibition in Section 11(a)(1) of the Act for any transaction for a member's own account, provided that: (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities; and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange. *See also* 17 CFR 240.11a1–1(T) (setting forth requirements for relying on the G Exemption).

[365] *See* Amendment No. 3, *supra* note 10, at 88.

[366] *See id.*

[367] *See* Amendment No. 3, *supra* note 10, at 90–92.

[368] *See* BOX Open-Outcry Trading Floor Approval, *supra* note 307, at 37153.

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BOX–2023–20 and should be submitted on or before June 11, 2024.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. The Commission notes that the original proposal and the proposal as modified by Amendment No. 2 were published for comment in the **Federal Register**.[369]

In Amendment No. 3, the Exchange amended the proposal to: (i) remove proposed Rule 5055(e)(2)(v)(a) regarding when a FLEX Equity Option order may be submitted; (ii) add rule language to proposed Rule 5055(b)(3) to clarify that FOO Orders may only be traded on the Trading Floor; (iii) modified proposed Rule 7605(c) to clarify who is applicable to apply to be a FLEX Market Maker; and (iv) made various clarifications to the rule text, including proposed Rule 7605(d)(4), and add additional clarifying changes to the purpose section and statutory basis for the proposed rule change. These changes help to clarify the proposal by providing additional specificity and justification about the proposal.

In addition, the Exchange made several changes to bring the proposed rules into closer alignment with the rules governing the trading of FLEX Equity Options on other national securities exchanges, including removing proposed Rule 5055(e)(2)(v)(a). These changes help make these aspects of the proposal substantially similar to the existing rules of national securities exchanges.

For these reasons, the changes and additional information in Amendment No. 3 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[370] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange. In addition, the Commission finds, pursuant to Rule 9b–1 under the Exchange Act, that FLEX Equity Options are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Exchange Act.[371]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[372] that the proposed rule change SR–BOX–2023–20, as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[373]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–11079 Filed 5–20–24; 8:45 am]

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[369] *See* Notice, *supra* note 3; OIP, *supra* note 8.

[370] 15 U.S.C. 78f(b)(2).

[371] 17 CFR 240.9b–1(a)(4). As part of the original approval process of the FLEX Options framework, the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as ''standardized options'' pursuant to Rule 9b–1(a)(4) under the Act. *See* Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792 (March 1, 1993).

[372] 15 U.S.C. 78s(b)(2).

[373] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100147; File No. SR–OCC–2024–006]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning Amendments to Its Rules and Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description

May 15, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2024, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would (1) implement additional stress scenarios designed to test the sufficiency of its prefunded financial resources and (2) amend OCC's Rules to provide greater context and detail on margin collection and Clearing Fund sizing that may result from this type of sufficiency stress testing. The proposed changes to OCC's (A) Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description (''Methodology Description''); and (B) Rules are included in Exhibits 5A and 5B [sic] to filing SR–OCC–2024–006. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As the sole clearing agency for standardized equity options listed on a national securities exchange registered with the Commission, and for the other products it clears, OCC is exposed to certain risks, including credit risk and liquidity risk arising from its Clearing Members' cleared contracts, for which OCC becomes the buyer to every seller and the seller to every buyer. The management of credit and liquidity risks are essential elements of OCC's risk management framework. Given the critical role OCC plays within the U.S. financial markets, it is vital that OCC maintains sufficient financial resources to cover its exposures under normal and stressed conditions and adequate resources to satisfy liquidity needs

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

arising from its settlement obligations. OCC manages its credit risk related to Clearing Members by collecting margin and Clearing Fund resources based on a Clearing Member's risk profile. OCC manages its liquidity risk by maintaining a reliable and diverse set of committed resources and liquidity providers, establishing a contingent funding plan for additional resources, and performing stress testing that covers a wide range of scenarios.

OCC performs daily stress testing of its financial resources using a wide range of scenarios. OCC's stress testing inventory contains, among others, scenarios [4] designed to measure the potential exposures that Clearing Member Group portfolios present relative to OCC's credit and liquidity resources and determine potential calls for additional collateral, either as margin or as Clearing Fund collateral, or adjust the forms of collateral on deposit (''Sufficiency Scenarios''); and monitor and assess the size of OCC's prefunded financial resources against a wide range of stress scenarios for informational and risk monitoring purposes (''Informational Scenarios''). OCC's stress tests are used for evaluating both credit and liquidity risk, and the output of these scenarios is also used for liquidity resource evaluation. Informational Scenarios are not used directly to size the Clearing Fund or drive calls for additional financial resources from OCC's Clearing Members. Informational Scenarios may be re-categorized as Adequacy, Sufficiency, or Sizing scenarios upon the approval of OCC's Risk Committee.

As part of the regular review of stress scenario output, OCC identified two of its existing Informational Scenarios that generated exposures that were consistently higher than those generated by the corresponding Sufficiency Scenarios. Such Informational Scenarios are variations of existing Sufficiency Scenarios representing the most extreme market rally and decline moves in 2008. The proposed scenarios differ from the existing scenarios in terms of how individual risk factor price shocks are determined, as further described below. OCC proposes to elevate these Informational Scenarios to Sufficiency Scenarios by amending a list in the Methodology Description,[5] which is filed as a rule with the Commission.[6] Such list represents a subset of Adequacy, Sizing, and Sufficiency Scenarios that have been implemented in OCC's stress testing system. OCC believes that the proposed rule change would enhance its ability to manage risks by considering a different approach to the determination of price shocks to evaluate how such an event could occur under current market conditions. While the proposed change to implement additional Sufficiency Scenarios could have an impact on Clearing Members if OCC called for additional financial resources based on the results of the new Sufficiency Scenarios in accordance with OCC's Rules, OCC believes the proposed Sufficiency Scenarios would generate stress test exposures that are generally in line with its current, most impactful Sufficiency Scenarios.[7]

Based on the results of the Sufficiency Scenarios, OCC may call for additional financial resources from its Clearing Members. For example, the results of OCC's Sufficiency Stress Tests may require the collection of intra-day margin from a Clearing Member Group under OCC Rule 609 [8] or an intra-month resizing of the Clearing Fund under OCC Rule 1001(c).[9] While these Rules provide the authority or requirement to call for additional resources based on the Sufficiency Stress Tests, details about how the calculations related to the relevant thresholds are made are documented in OCC's Clearing Fund Methodology Policy,[10] which is itself filed as a rule with the Commission.[11] Based on feedback received from staff of the Commission, OCC proposes to amend Rules 609 and 1001(c) to provide additional context and detail about the circumstances in which OCC would exercise this authority to call for additional resources. OCC does not believe the proposed changes to the Rules would have any effect on Clearing Members because the changes would merely incorporate additional detail already in effect under the Commission-approved Clearing Fund Methodology Policy.

(1) Purpose

OCC is proposing to (1) take two of its existing informational stress scenarios and add them to the list of stress scenarios designed to test the sufficiency of OCC's prefunded financial resources in the Methodology Description and (2) amend Rules 609 and 1001(c) to provide greater context and detail in the Rules on margin collection and Clearing Fund sizing that may result from this type of sufficiency stress testing.

Proposed Changes to the Methodology Description

OCC proposes to elevate two of its existing Informational Scenarios to Sufficiency Scenarios. OCC's inventory of Sufficiency Scenarios under the Methodology Description consists of historical scenarios designed to replicate historical events, including the most extreme market rally and decline moves (''Largest Rally/Decline'') in 2008 and 2020, under current market conditions. The proposed Sufficiency Scenarios are a variation of the existing Largest Rally/Decline Sufficiency Scenarios from 2008.

Price shocks are applied to individual securities or risk factors to replicate historical events under the Methodology Description. The existing Sufficiency Scenarios are historically based scenarios that employ a waterfall approach to determine which price

[4] OCC's stress testing inventory also contains scenarios designed to assess whether the resources collected are adequate to cover OCC's risk tolerance of a 1-in-50 year statistical market event over a two-year lookback period (''Adequacy Scenarios'') and to inform the size of OCC's financial resources (''Sizing Scenarios'').

[5] The Methodology Description describes the Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management that OCC uses to analyze the adequacy of its financial resources and to challenge its risk management framework.

[6] *See* Exchange Act Release Nos. 90827 (Dec. 30, 2020), 86 FR 659 (Jan. 6, 2021) (SR–OCC–2020–015); 89014 (June 4, 2020), 85 FR 35446 (June 10, 2020) (SR–OCC–2020–003); 87718 (Dec. 11, 2019), 84 FR 68992 (Dec. 17, 2019) (SR–OCC–2019–010); 87717 (Dec. 11, 2019), 84 FR 68985 (Dec. 17, 2019) (SR–OCC–2019–009); 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (SR–OCC–2018–008).

[7] *See infra* note 17 and accompanying text.

[8] *See* OCC Rule 609(a)(5) (providing that OCC may require the deposit of intra-day margin when a Sufficiency Stress Test identifies an exposure that exceeds 75% of the current Clearing Fund requirement less deficits).

[9] *See* OCC Rule 1001(c) (providing that if a Sufficiency Stress Test identifies a breach that exceeds 90% of the size of the Clearing Fund requirement (less any margin collected as a result of a Sufficiency Stress Test breach pursuant to Rule 609), the calculated size of the Clearing Fund shall be increased by the greater of $1 billion or 125% of the difference between the relevant risk exposure and the then-current Clearing Fund size).

[10] OCC's Clearing Fund Methodology Policy summarizes the manner in which OCC determines the level of financial resources necessary to satisfy the regulatory requirements and the Board's direction with respect to the additional financial resources necessary to withstand a wide range of foreseeable stress scenarios including, but are not limited to, the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions.

[11] *See* Exchange Act Release Nos. 96566 (Dec. 22, 2022), 87 FR 80207 (Dec. 29, 2022) (SR–OCC–2022–010); 94950 (May 19, 2022), 87 FR 31916 (May 25, 2022) (SR–OCC–2022–004); 93436 (Oct. 27, 2021), 86 FR 60499 (Nov. 2, 2021) (SR–OCC–2021–010); 92038 (May 27, 2021), 86 FR 29861 (June 3, 2021) (SR–OCC–2021–003); 89037 (June 10, 2020), 85 FR 36442 (June 16, 2020) (SR–OCC–2020–006); 89014 (June 4, 2020), 85 FR 35446 (June 10, 2020) (SR–OCC–2020–003); 87718 (Dec. 11, 2019), 84 FR 68992 (Dec. 17, 2019) (SR–OCC–2019–010); 86436 (July 23, 2019), 84 FR 36632 (July 29, 2019) (SR–OCC–2019–006); 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (SR–OCC–2018–008).

shocks to apply to risk factors.[12] To start, the actual return of the risk factor during the historical event is utilized as the price shock, if available. If unavailable,[13] a proxy market return from a corresponding sector is utilized as the price shock. Finally, if data is unavailable for both actual and sector returns, the price shock is determined by the ''beta'' [14] of the risk factor to its assigned risk driver [15] multiplied by the corresponding risk driver shock (the ''risk driver beta derived price shock''). The risk driver shock is the actual return of a given risk driver from the historical event. For example, the risk driver beta derived price shock for equity security ABC would be derived by multiplying ABC's historical beta to SPX (its risk driver) by the SPX risk driver shock.

The proposed Sufficiency Scenarios, which are currently classified as Informational, are a variation of the existing Largest Rally/Decline from 2008 Sufficiency Scenarios, the only difference being the determination of price shocks applied to individual risk factors. Namely, unlike the existing Largest Rally/Decline from 2008 Sufficiency Scenarios, the proposed Sufficiency Scenarios would not utilize the waterfall approach described above to apply price shocks. Instead, the proposed scenarios would directly apply the risk driver beta derived price shock. This approach is consistent with other statistical scenarios, including the Sizing Scenarios, which directly apply risk driver beta derived price shocks. Given that these existing Informational Scenarios generated exposures that were consistently higher than those generated by the corresponding Sufficiency Scenarios,[16] OCC proposes to elevate these Informational Scenarios to Sufficiency Scenarios. To effect such changes, OCC would update the list of scenarios contained in the Methodology Description to include the proposed Sufficiency Scenarios. Additionally, OCC proposes to make minor typographical edits to correct the formatting of footnotes throughout the text of the Methodology Description.

Elevating the subject Informational Scenarios to Sufficiency Scenarios will serve to enhance the existing suite of Sufficiency Scenarios by considering a different determination of price shocks to evaluate how such an event could occur under current market conditions. In their current state as Informational Scenarios, these scenarios do not drive the size of the Clearing Fund or calls for additional resources. However, as Sufficiency Scenarios, they would be used to measure the exposure of OCC's Clearing Fund to the portfolios of individual Clearing Member Groups and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional resources in the form of margin or an intra-month resizing of the Clearing Fund. The proposed rule change would enable OCC to test the sufficiency of its financial resources under a wider range of relevant stress scenarios and respond quickly when OCC believes additional financial resources are necessary. The proposed rule change would thereby improve OCC's ability to measure, monitor and manage its exposures to its participants and enhance OCC's ability to manage risks in its role as a systemically important financial market utility. OCC's analysis indicates that the proposed Sufficiency Scenarios generate stress test exposures that are generally in line with its current, most impactful Sufficiency Scenarios.[17]

Proposed Changes to the Rules

OCC proposes to provide further context and detail in the Rules on current Sufficiency Stress Test practices. As described above, Sufficiency Stress Tests are run through OCC's Sufficiency Scenarios, which, under the proposal, would include the proposed Sufficiency Scenarios. The results of OCC's Sufficiency Stress Tests may require the collection of intra-day margin from a Clearing Member Group or an intra-month resizing of the Clearing Fund. For example, pursuant to OCC Rule 609(a)(5),[18] if any of OCC's Sufficiency Scenarios identify exposures that exceed 75% of the current Clearing Fund requirement less deficits, OCC may require additional margin deposits (''intra-day margin'') from the Clearing Member Group(s) driving the breach. Additionally, pursuant to Rule 1001(c),[19] if a Sufficiency Scenario identifies a breach that exceeds 90% of the current Clearing Fund requirement (after subtracting any margin collected in accordance with a breach of the 75% threshold), OCC will promptly take action to initiate an increase in the size of the Clearing Fund on an intra-month basis to ensure that it continues to maintain sufficient prefunded financial resources.[20]

OCC proposes to amend Rule 609 to address the case where a Clearing Member is subject to multiple intra-day margin calls over the course of a month (*i.e.,* between resizing of the Clearing Fund, which is typically conducted monthly). Under OCC Rule 609(a)(5), if any of OCC's Sufficiency Scenarios identify exposures that exceed 75% of the current Clearing Fund requirement less deficits, OCC may require intra-day margin deposits from the Clearing Member Group(s) driving the breach. Currently, prior to the issuance of such margin call, OCC confirms the margin call amount against any existing intra-day margin call amounts for the monthly period under OCC Rule 609(a)(5). If the margin call amount is greater, a new margin call is issued for that amount.[21] The new margin call remains in effect until the next monthly resizing of the Clearing Fund or it is superseded by a larger margin call amount. Accordingly, OCC proposes language in the Rule to specify that, if a Clearing Member Group is subject to intra-day margin calls under more than one Sufficiency Stress Test, the largest call will be applied and remain in effect until the next monthly resizing. This

[12] A ''risk factor'' is a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. Risk factors include the returns on individual equity securities, returns on equity indexes, and returns on implied volatility risk factors, among others.

[13] An actual return may be unavailable as not all current risk factors existed during a given historical period. For example, TSLA, a current risk factor, was not a risk factor in 2008.

[14] The ''beta'' is the sensitivity of a security with respect to its corresponding risk driver (*i.e.,* the sensitivity of the price of the security relative to the price of the risk driver).

[15] The main risk drivers are price and volatility for equity securities. For example, the Cboe S&P 500 Index (''SPX'') and Cboe Volatility Index (''VIX'') are the main risk drivers for shocks of the equity risk factors. Other relevant risk drivers are utilized, including but not limited to, risk drivers to cover U.S. and Canadian Government Security collateral positions, risk drivers to cover commodity-based exchange traded funds and risk drivers to cover commodity-based futures products.

[16] *See infra* note 17.

[17] OCC has provided data and analysis concerning the proposed rule change in Confidential Exhibit 3A [sic] to SR–OCC–2024–006, including the performance of the proposed scenarios relative to the existing 2008 scenarios, an assessment of the risk drivers for which the proposed scenarios produce more conservative results, and an evaluation of the impact the proposed scenarios would have had on collection of additional financial resources.

[18] *See* Exchange Act Release No. 83406 (June 11, 2018), 83 FR 28018, 28025 (June 15, 2018).

[19] *Id.* at 28025–26.

[20] In addition to these Rules, which provide OCC authority to call for additional financial resources to mitigate credit risk identified under the Sufficiency Scenarios, OCC also may address liquidity risk identified under such Sufficiency Scenarios. *See, e.g.,* OCC Rules 601(g) & 609(b) (providing OCC authority to require the Clearing Member Group to provide additional cash collateral (''Required Cash Deposits'') if OCC forecasts that a Clearing Member's potential settlement obligations, including potential settlement obligations under stressed market conditions, could be in excess of OCC's liquidity resources to satisfy such obligations).

[21] For the avoidance of doubt, a new margin call is not issued if the margin call amount is equal to, or smaller than, an existing margin call amount for the monthly period.

proposed language is consistent with the language in OCC's Clearing Fund Methodology Policy.[22]

OCC also proposes minor changes for clarity and readability in Rule 609(a)(5). For example, OCC proposes replacing ''such that'' with ''from.'' Additionally, OCC proposes to remove ''less deficits'' in reference to OCC's Sufficiency Scenarios identifying exposures that exceed 75% of the current Clearing Fund requirement less deficits. Such language was relevant when OCC's Rules provided a two-day period for Clearing Members to deposit additional required Clearing Fund assets.[23] OCC has since shortened this collection period following Clearing Fund resizing from two business days to the next Settlement Time, making the reference to ''less deficits'' unnecessary as OCC considers such deficits covered.[24] The removal of such language is also consistent with the Commission-approved Clearing Fund Methodology Policy.[25] OCC believes such changes would provide additional transparency in the Rules by including greater context and detail, would not change current practices, and would promote consistency between OCC Rules and related policies.

OCC also proposes to amend Rule 1001(c) to provide additional transparency and clarity regarding intra-month Clearing Fund sizing adjustments. Under OCC Rule 1001(c), if a Sufficiency Scenario identifies a breach that exceeds 90% of the size of the Clearing Fund requirement (after subtracting any margin ''collected'' in accordance with a breach of the 75% threshold), OCC will promptly take action to initiate an increase in the size of the Clearing Fund on an intra-month basis. OCC proposes to amend the parenthetical to more clearly include amounts to be collected from a breach of the 75% threshold by adding ''or to be collected.'' This change would provide greater clarity to reflect that any margin calls issued pursuant to Rule 609(a)(5) are also subtracted in the calculation in Rule 1001(c).[26] Such change would conform with OCC's current practices set out in the Clearing Fund Methodology Policy, which does not limit the parenthetical in Rule 1001(c) to previously collected margin call amounts.[27]

OCC believes the proposed changes are intended to better align the descriptions in the Rules with OCC's current practices for the collection of intra-day margin or an intra-month resizing of the Clearing Fund resulting from OCC's Sufficiency Stress Tests. These changes would have no impact on Clearing Members and would not affect the Clearing Fund size, as they are consistent with the Commission-approved Clearing Fund Methodology Policy.

Implementation Timeframe

OCC expects to implement the proposed changes no later than sixty days from the date that OCC receives all necessary regulatory approvals for the filing in light of the technical system changes that are required to implement the additional stress scenarios. OCC will announce the implementation date of the proposed changes by an Information Memorandum posted to its public website at least seven days prior to implementation.[28]

(2) *Statutory Basis*

OCC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[29] and Rule 17Ad–22(e)(4)[30] and Rule 17Ad–22(e)(7)[31] thereunder, for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act[32] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and, in general, protect investors and the public interest. OCC proposes to (1) implement additional Sufficiency Scenarios in the Methodology Description and (2) provide greater context and detail in the OCC Rules on margin collection and Clearing Fund sizing that may result from this type of sufficiency stress testing. The proposed rule change would enhance OCC's framework for measuring, monitoring, and managing its credit risks. Implementation of the additional Sufficiency Scenarios would enable OCC to test the sufficiency of its prefunded financial resources under a wider range of stress scenarios and respond quickly when OCC believes the collection of additional financial resources is necessary. The ability to appropriately size and test the sufficiency of prefunded financial resources is critical to ensuring that OCC can continue to provide prompt and accurate clearance and settlement of securities and derivatives transactions in the event of a Clearing Member default and manage the risks associated with its role as a systemically important financial market utility. Amending the Methodology Description to incorporate the proposed Sufficiency Scenarios and make minor typographical edits would help ensure that such document remains clear and effective so that the requirements under this document continue to be carried out properly. Additionally, the proposed changes to the OCC Rules would enhance clarity and transparency regarding OCC practices on intra-day margin collection and intra-month Clearing Fund sizing adjustments resulting from Sufficiency Stress Tests. Such changes would promote understanding of the Rules by market participants and ensure consistency of the Rules with existing policies to reduce potential confusion, which would promote the prompt and accurate clearance and settlement of securities and derivatives transactions and, in general, protect investors and the public interest. Accordingly, OCC believes the proposed rule change is

[22] The Clearing Fund Methodology Policy states that, if a Clearing Member Group's Clearing Fund draws exceed the 75% threshold in more than one Sufficiency Stress Test scenario, the Clearing Member Group ''shall be subject to the largest margin call.'' *See supra* note 18 at 28025.

[23] *See* Exchange Act Release No. 94950 (May 19, 2022), 87 FR 31916, 31918 (May 25, 2022) (File No. SR–OCC–2022–004) (describing the then-current process that allows members two business days to meet routine funding obligations related to the Clearing Fund).

[24] *Id.* (describing the changes designed to require funding by the next Settlement Time, effectively requiring funding by the business day following notice of an obligation).

[25] A conforming reference to remove ''less deficits'' was made to OCC's Clearing Fund Methodology Policy in reference to OCC's Sufficiency Scenarios identifying exposures that exceed 75% of the current Clearing Fund requirement as part of File No. SR–OCC–2022–004. *Id.* (''These changes are intended to conform the Clearing Fund Methodology Policy with the proposed changes to OCC's Rules and support the reduced operational complexity that OCC expects to achieve by creating a more uniform settlement time.'').

[26] In practice deficits due to an intra-month resizing are due by the first Settlement Time following notification or such later time as provided by OCC pursuant to Rule 1005(b).

[27] The current Commission-approved Clearing Fund Methodology Policy, which OCC has provided as Exhibit 3B [sic] to File No. SR–OCC–2024–006, states that, if a Sufficiency Stress Test identifies a Clearing Fund draw that exceeds 90% of the current Clearing Fund requirement ''after subtracting margin calls resulting from a breach of [the 75% threshold],'' OCC will promptly act to initiate an intra-month increase in the Clearing Fund size.

[28] Implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 17 CFR 240.17Ad–22(e)(4).

[31] 17 CFR 240.17Ad–22(e)(7).

[32] 15 U.S.C. 78q–1(b)(3)(F).

consistent with the requirements of Section 17A(b)(3)(F) of the Act.[33]

Rule 17Ad–22(e)(4)(iii)[34] requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources (beyond those collected as margin) at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. Rule 17Ad–22(e)(4)(vi)(A)[35] further requires, in part, that such policies and procedures are reasonably designed to test the sufficiency of the covered clearing agency's total financial resources available to meet the minimum financial resource requirements under Rule 17Ad–22(e)(4)(iii)[36] by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions. As described above, OCC's Sufficiency Stress Tests are run through OCC's Sufficiency Scenarios, which, under the proposal, would include the proposed Sufficiency Scenarios. The results of Sufficiency Stress Tests may require collection of intra-day margin from a Clearing Member Group or an intra-month resizing of the Clearing Fund. The proposed changes would thus enable OCC to test the sufficiency of its prefunded financial resources under a wider range of stress scenarios, respond quickly to collect additional financial resources from its Clearing Members if the Sufficiency Scenario exposures breach the predetermined thresholds established in OCC's Rules and Clearing Fund Methodology Policy, and promote clarity and transparency on its Sufficiency Stress Tests in the OCC Rules. Moreover, the proposed Sufficiency Scenarios were constructed in accordance with OCC's existing Methodology Description using standard predetermined parameters and assumptions. As a result, OCC believes the proposed rule change is designed to further OCC's compliance with the requirements of Rules 17Ad–22(e)(4)(iii) and (vi)(A).[37]

Rule 17Ad–22(e)(7)(vi)[38] requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by determining the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement. The proposed changes would allow OCC to test the sufficiency of its liquid resources under a wider range of stress scenarios and respond quickly to collect additional liquid resources from its Clearing Members if the Sufficiency Scenario output breaches the predetermined threshold established in OCC's Liquidity Risk Management Framework. The inclusion of the proposed scenarios as Sufficiency Scenarios would increase the likelihood that OCC maintains sufficient liquid resources at all times. OCC thus believes the proposed rule change is consistent with the requirements of Rules 17Ad–22(e)(7)(vi).[39]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act[40] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed changes to the OCC Rules would have no impact on Clearing Members and would not affect the Clearing Fund size as they are consistent with current OCC policies, as described above. Such changes would enhance clarity and transparency regarding OCC practices for the collection of intra-day margin and intra-month resizing of the Clearing Fund resulting from Sufficiency Stress Tests by providing further detail and context in the Rules. While the proposed change to implement additional Sufficiency Scenarios could have an impact on certain Clearing Members, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC's analysis indicates that the proposed Sufficiency Scenarios generate stress test exposures that are generally in line with its current, most impactful Sufficiency Scenarios.[41] OCC notes, however, that the results of these proposed scenarios may vary depending on the composition of each individual Clearing Member's portfolio at a given point in time. As a result, the proposed scenarios could from time to time result in more frequent or larger sufficiency stress test margin calls.

The implementation of the new Sufficiency Scenarios would enable OCC to test the sufficiency of its financial resources under a wider range of relevant stress scenarios and respond quickly when OCC believes additional financial resources are required. The proposed changes are designed to improve OCC's ability to measure, monitor and manage its credit exposures to its participants consistent with its regulatory requirements under Rule 17Ad–22(e)(4),[42] to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by OCC under Rule 17Ad–22(e)(7),[43] and to enhance OCC's ability to manage risks in its role as a systemically important financial market utility. Moreover, the proposed Sufficiency Scenarios were constructed in accordance with OCC's approved stress testing methodology using standard predetermined parameters and assumptions. These scenarios provide diversification in terms of how price shocks are applied to individual risk factors and would help capture risks that OCC's current inventory of Sufficiency Scenarios may not capture. Accordingly, OCC believes that any impact on competition or OCC's Clearing Members would be necessary and appropriate in furtherance of the protection of investors and the public interest under the Act. For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to clearing agencies, and would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[44]

[33] *Id.*

[34] 17 CFR 240.17Ad–22(e)(4)(iii).

[35] 17 CFR 240.17Ad–22(e)(4)(vi)(A).

[36] 17 CFR 240. 17Ad–22(e)(4)(iii).

[37] 17 CFR 240.17Ad–22(e)(4)(iii) and (vi)(A).

[38] 17 CFR 240.17Ad–22(e)(7)(vi).

[39] *Id.*

[40] 15 U.S.C. 78q–1(b)(3)(I).

[41] OCC has provided data and analysis concerning the proposed rule change in Confidential Exhibit 3A [sic] to SR–OCC–2024–006.

[42] 17 CFR 240.17Ad–22(e)(4).

[43] 17 CFR 240.17Ad–22(e)(7).

[44] 15 U.S.C. 78s(b)(1).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of the notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–OCC–2024–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–OCC–2024–006. 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 (*https://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 OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–OCC–2024–006 and should be submitted on or before June 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–11078 Filed 5–20–24; 8:45 am]

BILLING CODE 8011–01–P

[45] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Meeting of the Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development (IATF).

DATES: Wednesday, June 5, 2024, from 1 p.m. to 3 p.m. ET.

ADDRESSES: The public meeting will be held virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The virtual meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line, ''RSVP for June 5, 2024, IATF Virtual Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line, ''Response for June 5, 2024, IATF Virtual Public Meeting'' no later than May 24, 2024, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advance will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period. Participants can join the meeting via computer at this link: *https://bit.ly/IATF-Jun24* or by phone. Call in (audio only): Dial: +1 206–413–7980: Phone Conference ID: 547 522 842#. Special accommodation requests should be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* All applicable documents will be posted on the IATF website prior to the meeting: *https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-veterans-business-development#sba-card-collection--heading-7153.* For more information on veteran-owned small business programs, please visit *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (IAFT). The IATF is established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the IATF's objectives for fiscal year 2024.

Dated: May 15, 2024.

Andrienne Johnson,

Committee Manager Officer.

[FR Doc. 2024–11053 Filed 5–20–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for a meeting of the Advisory Committee on Veterans Business Affairs (ACVBA).

DATES: Thursday, June 6, 2024, from 9 a.m. to 3:30 p.m. ET.

ADDRESSES: The public meeting will be held virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The virtual meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line, ''RSVP for June 6, 2024, ACVBA Virtual Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line, ''Response for June 6, 2024, ACVBA Virtual Public Meeting'' no later than May 24, 2024, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period.

Participants can join the meeting via computer at this link *https://bit.ly/ACVBA-Jun24* or by phone. Call in (audio only): Dial: +1 206–413–7980: Phone Conference 849 468 853#

Special accommodation requests should be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov*. All applicable documents will be posted on the ACVBA website prior to the meeting: *https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-veterans-business-development#sba-card-collection--heading-7153*. For more information on veteran-owned small business programs, please visit *www.sba.gov/ovbd*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The ACVBA is established pursuant to 15 U.S.C. 657(b) note and serves as an independent source of advice and policy. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the ACVBA's objectives for fiscal year 2024.

Dated: May 15, 2024.

Andrienne Johnson,

Committee Manager Officer.

[FR Doc. 2024–11054 Filed 5–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket ID Number: DOT–OST–2010–0140]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), as amended, this notice announces the Department of Transportation's (Department or DOT) intention to renew Office of Management and Budget (OMB) Control Number 2105–0561 for the collection and posting of certain aviation consumer protection-related information from U.S. carriers and foreign carriers. The subject information collections relate to requirements in the Code of Federal Regulations (CFR) for the development and auditing of carrier customer service plans, reporting of tarmac delays, display of on-time performance, and the posting of various consumer protection documents on carrier websites. The Control Number is set to expire on August 31, 2024, unless renewed.

DATES: Comments on this notice must be received by July 22, 2024. Interested persons are invited to submit comments regarding this proposal.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Commenters using this method of delivery should contact Docket Services at 202–366–9826 or 202–366–9317 before delivery to ensure staff is available to receive the delivery.
- *Instructions:* You must include the agency name and docket number DOT–OST–2010–0140 at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.
- *Privacy Act:* Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *www.transportation.gov/privacy.*
- *Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Alexa Strong or Hannah Cohen, Office of the Secretary, Office of Aviation Consumer Protection (C–70), U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, at *Alexa.Strong@dot.gov,* 202–768–3269 or *Hannah.Cohen@dot.gov,* 202–641–3623. Arrangements to receive this document in an alternative format may be made by contacting the above-named individuals.

SUPPLEMENTARY INFORMATION:

Title: Submission of Miscellaneous Information Collection Systems as Required by the Department's Rules to Enhance Airline Passenger Protections.

OMB Control Number: 2105–0561.

On Dec. 30, 2009 and April 25, 2011, the Department issued two rules to enhance airline passenger protections that, among other things, required U.S. and foreign carriers to adopt and audit a customer service plan, retain information regarding tarmac delays, submit data regarding tarmac delays, and post tarmac delay plans, customer service plans, and contracts of carriage on their websites. The 2009 rule also required U.S. carriers that file on-time performance reports under 14 CFR part 234 (''reporting carriers'') to display the on-time performance of domestic flights on their websites. A 2016 rule then expanded the definition of U.S. carriers considered reporting carriers.

On May 3, 2021, the Department issued a rule amending its tarmac delay requirements. Among other things, the rule narrowed the tarmac delay data reporting requirements in 14 CFR part 244 to those delays considered ''excessive tarmac delays'' (*i.e.,* those tarmac delays exceeding 3 hours on domestic flights and 4 hours on

international flights). The amended rule also required carriers to file a narrative report regarding such tarmac delays and eliminated the requirement to retain the delay information for two years.

Currently, the Department's Office of Aviation Consumer Protection (OACP) is finalizing development of the Aviation Complaint, Enforcement, and Reporting System (ACERS), a database that it intends to require carriers to use when submitting tarmac delay information as required under 14 CFR part 259. ACERS will help streamline the process by which OACP receives, reviews, and analyzes the narrative reports submitted by carriers.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

This notice addresses five information collection requirements set forth in the Department's airline passenger protection rules: (1) posting of tarmac delay plans, customer service plans, and contracts of carriage on carrier websites, (2) submission of a narrative report regarding tarmac delays that last over three hours for domestic flights and four hours for international flights, (3) adoption and audit of customer service plans and retention of results, (4) display of on-time performance data on carrier websites, and (5) submission of a data report for tarmac delays that last over three hours for domestic flights and four hours for international flights. It seeks renewal of the OMB control number with respect to all information collections set forth in this notice. For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burdens are set forth below:

1. Requirement to post tarmac delay plans, customer service plans, and contracts of carriage on a carrier's website. (14 CFR 259.2 and 259.6)

Title: Posting of Tarmac Delay Plan, Customer Service Plan, and Contract of Carriage on website.

Respondents: U.S. carriers that operate scheduled passenger or public charter service and foreign air carriers operating scheduled passenger or public charter service to or from the United States, using any aircraft with a designed seating capacity of 30 or more seats. Applicable to U.S. carriers that have a website and foreign carriers that have a website marketed toward U.S. consumers.

Estimated Number of Respondents: 44 U.S. air carriers and 112 foreign air carriers.

Estimated Total Burden on Respondents: 65 hours (3,900 minutes, average of 25 minutes per carrier to post plans and contracts of carriage on website). The burden calculation accounts for additional time carriers may spend updating the contents of their customer service plans.

Frequency: One time per respondent.

2. *Requirement to file a narrative report with OACP of each flight that experiences a tarmac delay of more than three hours (domestic flights) and more than four hours (international flights). (14 CFR 259.4(g))*

Title: Reporting of Tarmac Delays in a Narrative Format That Complies with 49 U.S.C. 42301(h).

Respondents: U.S. Carriers that operate scheduled passenger service or public charter service using any aircraft with 30 or more seats, and foreign air carriers that operate scheduled passenger or public charter service to and from the United States using any aircraft with 30 or more seats.

Estimated Number of Respondents: 44 U.S. air carriers and 112 foreign air carriers.

Estimated Annual Burden on Respondents: 2 hours per report for U.S. carriers and 4 hours per report for foreign carriers. The expected burden per U.S. carrier is between 0 and 147 reports per year, and the expected burden per foreign carrier is between 0 and 2 reports per year (based on the highest annual number of tarmac delays experienced by a single U.S. and foreign carrier from 2022 and 2023), or 0.0 to 294.0 hours of burden per U.S. carrier and 0.0 to 8.0 hours of burden per foreign carrier.

Estimated Total Annual Burden: Based on the average number of tarmac delay reports filed with OACP by each type of carrier from 2022 through 2023, 358 reports for U.S. carriers and 10 reports for foreign carriers, or a total of 756 hours (358 reports multiplied by 2 hours per report for U.S. carriers, and 10 reports multiplied by 4 hours for foreign carriers).

Frequency: One report per respondent for each tarmac delay.

3. Requirement that certain U.S. and foreign air carriers adopt a Customer Service Plan and retain for two years the results of its annual self-audit of its compliance with its Customer Service Plan. (14 CFR 259.2 and 259.5)

Title: Adopting a Customer Service Plan and Retaining Self-audit of Customer Service Plan.

Respondents: U.S. carriers that operate scheduled passenger service using any aircraft with a designed seating capacity of 30 or more seats, and foreign air carriers that operate scheduled passenger service to and from the United States using any aircraft with a designed seating capacity of 30 or more seats.

Number of Respondents: 44 U.S. air carriers and 112 foreign air carriers.

Estimated Annual Burden on Respondents: 15 minutes per year for each respondent. The estimate was calculated by multiplying the estimated time for carriers to maintain an updated Customer Service Plan and to retain a copy of the carrier's self-audit of its compliance with its Customer Service Plan by the number of audits per carrier in a given year (1). The initial costs of adopting a Customer Service Plan are not included in this estimate as most covered carriers initially adopted such plans when the requirement was promulgated in 2009 (for U.S. carriers) and 2011 (for foreign carriers).

Estimated Total Annual Burden: A maximum of 39 hours (2,340 minutes) for all respondents. The estimate was calculated by multiplying the time in a given year for each carrier to maintain an updated Customer Service Plan and to retain a copy of its self-audit of its compliance with its Customer Service Plan (15 minutes) by the total number of covered carriers (156 carriers).

Frequency: One information set to maintain and retain per year for each respondent.

4. Requirement that each large U.S. carrier display on its website, at a point before the consumer selects a flight for purchase, the following information for each listed flight regarding its on-time performance during the last reported month: The percentage of arrivals that were on time (within 15 minutes of scheduled arrival time), the percentage of arrivals that were more than 30 minutes late (with special highlighting if the flight was more than 30 minutes late more than 50 percent of the time), and the percentage of flight cancellations if the flight is cancelled more than 5% of the time. In addition, the requirement that a marketing/reporting carrier display delay data for its non-reporting codeshare carrier(s). (14 CFR 234.11)

Title: Displaying On-time performance Information on Carrier website.

Respondents: U.S. carriers that operate scheduled passenger service that account for at least 0.5 percent of domestic scheduled passenger revenue and that market flights directly to consumers via a website.

Number of Respondents: 15 carriers.

Estimated Annual Burden on Respondents: 2 hours per month (24 hours annually) to cover both updates of a carrier's own delay data and updates of code-share delay data.

Estimated Total Annual Burden: No more than 360 hours (21,600 minutes) a year for all respondents. The estimate was calculated by multiplying the total number of hours per carrier per year for management of data links (24) by the number of covered carriers (15).

Frequency: Updating information for each flight listed on website 12 times per year (1 time per month) for each respondent (for both a carrier's own delay data and code-share delay data).

5. Requirement that carriers report certain tarmac delay data to BTS for each tarmac delay exceeding 3 Hours (for domestic flights) and exceeding 4 Hours (for international flights). (14 CFR 244.3)

Title: Reporting Tarmac Delay Data to BTS for Tarmac Delays Exceeding 3 Hours (for Domestic Flights) and 4 Hours (for International Flights).

Respondents: U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with 30 or more seats, and foreign air carriers that operate scheduled passenger or public charter service to and from the United States using any aircraft with 30 or more seats.

Number of Respondents: 44 U.S. air carriers and 112 foreign air carriers.

Estimated Annual Burden on Respondents: 30 minutes per report filed. The expected burden per U.S. carrier is between 0 and 147 reports per year, and the expected burden per foreign carrier is between 0 and 2 reports per year (based on the highest and lowest number of reports submitted by each individual U.S. and foreign carrier from 2022 and 2023), or 0.0 to 73.5 hours of burden per U.S. carrier and 0.0 to 1.0 hours of burden per foreign carrier.

Estimated Total Annual Burden: Based on an average number of tarmac delays reported to BTS for 2022 and 2023, the estimated annual burden is 368 reports for U.S. carriers and foreign carriers, or a total of 184 hours (368 reports multiplied by 30 minutes per report).

Frequency: One report per respondent for each tarmac delay.

We invite comments on (a) whether the collection of information is necessary for the proper performance of the functions of DOT, including whether the information will have practical utility; (b) the accuracy of DOT's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. 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 on the docket.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.26, 1.27, 1.48 and 1.49; DOT Order 1351.29.

Issued in Washington, DC.

Livaughn Chapman, Jr.,

Deputy Assistant General Counsel, Office of Aviation Consumer Protection.

[FR Doc. 2024–11140 Filed 5–20–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*)

Notice of OFAC Actions

On May 16, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and entities are blocked under the relevant sanctions authority listed below.

Individuals

1. BUDNEV, Aleksey (a.k.a. BUDNEV, Aleksei Viktorovich; a.k.a. BUDNEV, Aleksey Viktorovich (Cyrillic: БУДНЕВ, Алексей Викторович); a.k.a. BUDNEV, Alexey; a.k.a. BUDNEV, Alexey Viktorovich), 34 Zolotorozhskiy Val, Building 2, Moscow 111033, Russia; DOB 09 Jul 1964; POB Krymskaya Region, Russia; nationality Russia; citizen Russia; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Tax ID No. 504217593565 (Russia) (individual) [DPRK].

   Designated pursuant to Section 1(a)(ii)(A) of Executive Order 13551 of August 30, 2010, "Blocking Property of Certain Persons With Respect to North Korea" (E.O. 13551) for having, directly or indirectly, imported, exported, or reexported to, into, or from North Korea any arms or related materiel.

2. GAZARYAN, Rafael Anatolyevich (Cyrillic: ГАЗАРЯН, Рафаэль Анатольевич) (a.k.a. GAZARYAN, Rafael' Anatol'evich; a.k.a. GAZARYAN, Rafael Anatolievich), Russia; DOB 02 Oct 1954; nationality Russia; citizen Russia; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport 6102814100 (Russia); Tax ID No. 622800585633 (Russia) (individual) [DPRK] (Linked To: MKRTYCHEV, Ashot).

   Designated pursuant to Section 1(a)(ii)(E) of E.O.13351 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Ashot Mkrtychev, a person whose property and interests in property are blocked pursuant to E.O. 13551.

Entities

1. RAFORT LIMITED LIABILITY COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РАФОРТ) (a.k.a. LIMITED LIABILITY COMPANY RAFORT; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU RAFORT; a.k.a. RAFORT, OOO (Cyrillic: ООО РАФОРТ); a.k.a. "LIMITED LIABILITY COMPANY RUBIN" (Cyrillic: "ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РУБИН"); a.k.a. "RAFORT"; a.k.a. "RUBIN, OOO" (Cyrillic: "ООО РУБИН")), Apartment 40, Building 43, Tatarskaya Street, Ryazan, Ryazan Oblast 390005, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Tax ID No. 6234061793 (Russia); Business Registration Number 1086234013051 (Russia) issued 16 Oct 2008 [DPRK] (Linked To: GAZARYAN, Rafael Anatolyevich).

   Designated pursuant to Section 1(a)(ii)(F) of E.O. 13551, for being owned or controlled by, directly or indirectly, Rafael Anatolyevich Gazaryan, a person whose property and interests in property are blocked pursuant to E.O. 13551.

2. TEKHNOLOGIYA, OOO (Cyrillic: ООО ТЕХНОЛОГИЯ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TEKHNOLOGIYA; a.k.a. "TECHNOLOGY COMPANY LIMITED"; a.k.a. "TECHNOLOGY LIMITED LIABILITY COMPANY" (Cyrillic: "ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТЕХНОЛОГИЯ"); a.k.a. "TECHNOLOGY LLC"), Building 2, Sadovniki Street, Nagatino-Sadovniki Municipal District, Moscow 115487, Russia; Part of Room 453, Letter A, Housing 2, Building 11, Staroderevenskaya Street, Saint Petersburg 197374, Russia; Letter A, Office 402, Building 5, Aleksandr Blok Street, Saint Petersburg 190121, Russia; Apartment 7, Building 21, Mashkova Street, Basmanniy Municipal District, Moscow 101000, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 14 Aug 2008; Tax ID No. 7839388531 (Russia); Government Gazette Number 87375823 (Russia); Business Registration Number 1089847320188 (Russia) issued 14 Aug 2008 [DPRK] (Linked To: BUDNEV, Aleksey).

   Designated pursuant to Section 1(a)(ii)(F) of E.O. 13551, for being owned or controlled by, directly or indirectly, Aleksey Budnev, a person whose property and interests in property are blocked pursuant to E.O. 13551.

3. TRANS KAPITAL LIMITED LIABILITY COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТРАНС КАПИТАЛ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TRANS KAPITAL; a.k.a. TRANS KAPITAL LLC (Cyrillic: ООО ТРАНС КАПИТАЛ); a.k.a. TRANS KAPITAL, OOO), Room 1, Building 1, Fire Lane, Noginsk, Borodskiy Urban District, Moscow Oblast 142400, Russia; Building 29, SNT Poltevo Territory, Noginsk, Borodskiy Urban District, Moscow Oblast, Russia; Room 1, 3 Lenin Avenue, Balashikha, Moscow Oblast 143900, Russia; Letter B, Office 10, Plot 68, Proyektnaya Street, Balashikha, Moscow Oblast 143921, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Tax ID No. 5001101089 (Russia); Government Gazette Number 34892010 (Russia); Business Registration Number 1145001004378 (Russia) issued 06 Nov 2014 [DPRK] (Linked To: GAZARYAN, Rafael Anatolyevich).

Designated pursuant to Section 1(a)(ii)(E) of E.O.13351 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Rafael Anatolyevich Gazaryan, a person whose property and interests in property are blocked pursuant to E.O. 13551.

Authorities: E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p. 242.

Dated: May 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–11098 Filed 5–20–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of one person currently included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On May 16, 2024, OFAC updated the entry on the SDN List for the following entity, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authorities listed below.

Entity

—From—

1. BEIJING YUNZE TECHNOLOGY CO., LTD. (Chinese Simplified: 北京云泽科技有限公司), Room 603, Floor 6, Building 4, Wulidian Area 1, Fengtai District, Beijing, China; Organization Established Date 21 Aug 2013; Unified Social Credit Code (USCC) 91110106076601507N (China) [RUSSIA-EO14024].

—To—

BEIJING YUNZE TECHNOLOGY CO., LTD. (Chinese Simplified: 北京昀泽科技有限公司), Room 402, 4th Floor, No. 85 Huilongguan Ave West, Changping District, Beijing 102208, China; Organization Established Date 05 Jan 2016 to 06 Jan 2016; Unified Social Credit Code (USCC) 91110114MA0031TR1Y (China) [RUSSIA-EO14024] (Linked To: PRIVATE MILITARY COMPANY 'WAGNER').

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PMC WAGNER, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: May 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–11099 Filed 5–20–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
Yemen

Lindsay Kitzinger,

International Tax Counsel (Tax Policy).

[FR Doc. 2024–11108 Filed 5–20–24; 8:45 am]

BILLING CODE 4810–AK–P

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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 245

Certification of Dispatchers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 245

[Docket No. FRA–2022–0019, Notice No. 4]

RIN 2130–AC91

July 22, 2024 Certification of Dispatchers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is establishing regulations for the certification of dispatchers, pursuant to the authority granted in section 402 of the Rail Safety Improvement Act of 2008 (RSIA).

DATES: This regulation is effective July 22, 2024.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* at any time.

FOR FURTHER INFORMATION CONTACT: Curtis Dolan, Railroad Safety Specialist, Dispatch Operating Practices, Federal Railroad Administration, telephone: (470) 522–6633, email: *curtis.dolan@dot.gov;* or Michael C. Spinnicchia, Attorney Adviser, Federal Railroad Administration, telephone: (202) 713–7671, email: *michael.spinnicchia@dot.gov.*

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AANP—American Association of Nurse Practitioners
AAR—Association of American Railroads
ADA—Americans with Disabilities Act
ANSI—American National Standards Institute
APTA—American Public Transportation Association
ASLRRA—American Short Line and Regional Railroad Association
ATDA—American Train Dispatchers Association
BRS—Brotherhood of Railroad Signalmen
CAD—computer-aided dispatching
CE—categorical exclusion
CRB or Board—Certification Review Board
DAC—Drug and Alcohol Counselor
D.C. Circuit—U.S. Court of Appeals for the District of Columbia Circuit
DOT—U.S. Department of Transportation
EA—environmental assessment
EIS—environmental impact statement
FRA—Federal Railroad Administration
Hz—hertz
IBEW—International Brotherhood of Electrical Workers
IMOU—implementing memorandum of understanding
mph—miles per hour
MTA—Metropolitan Transportation Authority
NEPA—National Environmental Policy Act
NPRM—Notice of Proposed Rulemaking
NRC—Network Rail Consulting
NS—Norfolk Southern Railway
OJT—On the job training
PTC—Positive Train Control
RIA—Regulatory Impact Analysis
RLO—Rail Labor Organization
RRP—Risk Reduction Program
RSAC—Railroad Safety Advisory Committee
RSIA—Rail Safety Improvement Act of 2008
RWIC—Roadway Worker In Charge
SAP—Substance Abuse Professional
SBA—Small Business Administration
Secretary—Secretary of Transportation
SEPTA—Southeastern Pennsylvania Transportation Authority
SMART–TD—International Association of Sheet Metal, Air, Rail and Transportation Workers Transportation Division
SSP—System Safety Program
TTD—Transportation Trade Department, AFL–CIO
WLF—Washington Legal Foundation

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I. Executive Summary

Purpose of the Regulatory Action

FRA is requiring railroads to develop programs for certifying individuals who perform dispatching tasks on their networks. Under this rule, railroads are required to have formal processes for training prospective dispatchers, as well as verifying that each dispatcher has the requisite knowledge, skills, safety record, and abilities to safely perform all of the safety-related dispatcher duties mandated by Federal laws and regulations, prior to certification. In addition, railroads are required to have formal processes for revoking certification for dispatchers who violate specified minimum requirements.

FRA is promulgating this regulation in response to section 402 of the RSIA, Public Law 110–432, 122 Stat. 4848, 4884 (Oct. 16, 2008), which required the Secretary of Transportation (Secretary) to submit a report to Congress addressing whether certification of ''certain crafts or classes'' of railroad employees or contractors, including railroad dispatchers, was necessary to ''reduce the number and rate of accidents and incidents or to improve railroad safety.'' Section 402 further provides that the Secretary may prescribe regulations requiring the certification of certain crafts or classes if the Secretary determined, pursuant to the report to Congress, that such regulations are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.

The Secretary submitted a report to Congress on November 4, 2015, stating that, based on FRA's preliminary research, dispatchers were one of the most viable candidate railroad crafts for certification due to the complex safety-critical work dispatchers perform, the high turnover among dispatchers which has led to a less experienced workforce, and the need to prevent persons with active substance abuse disorders from

working as dispatchers.[1] FRA subsequently performed outreach with various stakeholders to compile a list of tasks performed by dispatchers. Upon review of this task list, FRA found that the vast majority of dispatcher tasks are critical to railroad safety with potentially catastrophic consequences if they are not performed properly. Certification addresses these safety concerns by creating minimum training standards, establishing safety records for dispatchers, and requiring certain safety and knowledge checks before a person can become certified. Given the safety critical role of dispatchers in facilitating safe railroad operations (which includes the coordination of emergency services in response to accidents and incidents), FRA determined that the number and rate of accidents and incidents would be expected to decrease and railroad safety would be expected to improve if dispatchers were required to satisfy certain standards and be certified.

Summary of Major Provisions

This rule requires railroads to develop written programs for certifying individuals who work as dispatchers on their territories; to submit those written certification programs to FRA for approval; and, once approved by FRA, to implement such programs. Subpart A of this rule contains general provisions, including a formal statement of the rule's purpose and scope.

Subpart B of this rule covers the review and approval process of certification programs, the implementation schedule for this rule, the certification program requirements, and the eligibility determinations a railroad must make to certify a person as a dispatcher. Class I railroads (including the National Railroad Passenger Corporation) and railroads providing commuter service will have to submit their written certification programs to FRA no later than 240 days after the effective date of this rule. Class II and Class III railroads will be required to submit their written certification plans 480 days after this rule goes into effect. New railroads that begin dispatching operations after this rule's effective date will be required to submit their written certification programs to FRA and obtain FRA approval before commencing dispatching operations. FRA will issue a letter to the railroad when it approves a certification program that explains the basis for approval, and a program will not be considered approved until FRA issues the approval letter. In addition, railroads seeking to materially modify their FRA-approved certification programs must obtain FRA approval prior to implementing such modifications.

Railroads are required to evaluate certification candidates in multiple areas, including prior safety conduct as a motor vehicle operator, prior safety conduct with other railroads, substance abuse disorders and alcohol/drug rules compliance, and visual and hearing acuity.

This rule also contains minimum requirements for the training provided to prospective dispatchers. These requirements are intended to confirm that certified dispatchers have received adequate and sufficient training and testing to ensure that the prospective dispatchers are able to safely perform assigned duties that ensure the safety of train movement before they begin work as dispatchers on the railroad. The requirements are also intended to ensure that certified dispatchers periodically receive training on railroad safety and operating rules and practices, as well as comprehensive training on the use of new dispatching systems and technology before they are introduced on the railroads in revenue service.

Subpart C of this rule addresses how railroads are to administer their dispatcher certification programs. With the exception of individuals designated as certified dispatchers prior to FRA approval of the railroad's dispatcher certification program, this rule prohibits railroads from certifying dispatchers for intervals longer than three years. This three-year limitation, which is consistent with the maximum period for certifying locomotive engineers in 49 CFR 240.217(c) and conductors in 49 CFR 242.201(c), allows for periodic re-evaluation of certified dispatchers to verify their continued compliance with FRA's minimum safety requirements.

Subpart D of this rule addresses the process and criteria for denying and revoking certification. The rule describes the process a railroad must undergo before it denies an individual certification or recertification. This process includes providing the certification candidate with the information that forms the basis for the denial decision and giving the candidate an opportunity to rebut such evidence. The rule also requires that a railroad make any decision to deny an individual certification or recertification in writing and that written decision must meet certain requirements.

A railroad can only revoke a dispatcher's certification if one of seven events occurs. Generally, for the first revocable event that is not related to a dispatcher's use of drugs or alcohol, the person's certification will be revoked for 30 days. If an individual accumulates more of these violations in the time period specified in the final rule, the revocation period (period of ineligibility) becomes increasingly longer.

If a railroad acquires reliable information that a certified dispatcher has violated an operating rule or practice requiring revocation under this rule, it shall suspend the dispatcher's certificate immediately while it determines whether revocation of the certificate is warranted. In such circumstances, dispatchers are entitled to a hearing. Similar to a railroad's decision to deny an individual certification, a railroad's decision to revoke a dispatcher's certification must satisfy certain requirements. Finally, if an intervening cause prevents or materially impairs a dispatcher's ability to comply with a railroad operating rule or practice, the railroad must not revoke the dispatcher's certification.

Subpart E of this rule describes the dispute resolution process for individuals wishing to challenge a railroad's decision to deny certification, deny recertification, or revoke certification. This dispute resolution process mirrors the process used for locomotive engineers and conductors under 49 CFR parts 240 and 242, respectively.

Finally, this rule contains two appendices. Appendix A discusses the procedures that a person seeking certification or recertification should follow to furnish a railroad with information concerning the individual's motor vehicle driving record. Appendix B provides guidance on the procedures railroads should employ in administering the vision and hearing requirements under §§ 245.117 and 245.118.

This rule does not revise 49 CFR part 241, United States Locational Requirement for Dispatching of United States Rail Operations. Furthermore, this rule does not apply to dispatchers located outside of the United States as ''[i]t is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' ''[2]

Benefits and Costs

FRA analyzed the economic impact of this final rule. The primary benefit of this final rule, as presented in the Regulatory Impact Analysis (RIA), is

[1] FRA–2022–0019–0001.

[2] *E.E.O.C.* v. *Arabian American Oil Co.,* 499 U.S. 244, 248 (1991) (*quoting Foley Bros., Inc.* v. *Filardo,* 336 U.S. 281, 284–85 (1949)).

that it will help ensure that railroads properly train and monitor dispatcher performance to reduce the risk of accidents caused by dispatcher error. This rule will allow railroads to revoke certification of dispatchers who incur serious safety-related violations. This includes failure to properly issue or apply a mandatory directive when warranted or incorrectly granting permission to proceed through a protected track segment.

This rule is expected to reduce the likelihood of an accident occurring due to dispatcher error. FRA has analyzed accidents over the past five years to categorize those where dispatcher training and certification would have impacted the accident. FRA estimated that this rule will prevent 30% of accidents that were caused or likely caused by the dispatcher. FRA estimated that this rule will prevent 10% of accidents where a dispatcher may have contributed to the accident.

The following table shows the estimated 10-year benefits of this rule. The total 10-year estimated benefits would be $0.6 million (PV, 7 percent) and annualized benefits would be $0.1 million (PV, 7 percent).

TOTAL 10-YEAR DISCOUNTED BENEFITS

[2020 dollars]

Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
620,283	725,177	88,314	85,013

FRA has quantified the monetary impact from accidents reported on FRA accident forms. However, some accident costs are not required to be reported on FRA accident forms (*e.g.,* environmental impact). The cost of FRA-reportable damage, such as the cost of direct labor and damage to on-track equipment, track, track structures, and roadbed, only represents a portion of the total cost of train accidents. Other direct accident costs, such as accident clean up, third party property damage, lost lading, environmental damage, loss of economic activity to the community, and train delays are not included in FRA's accident/incident reportable damages from the railroads. That impact may account for additional benefits not quantified in this analysis. If these costs not covered by FRA data were realized, accidents affected by this rulemaking could have much greater economic impact than the quantitative benefit estimates provided here.

The RIA also presents estimates of the costs likely to occur over the first ten years of the final rule. The analysis includes estimates of costs associated with development of certification programs, initial and periodic training, knowledge testing, and monitoring of operational performance. Additionally, costs are estimated for vision and hearing tests, review of certification determinations made by other railroads, and Government administrative costs.

FRA estimated 10-year costs of $5.4 million discounted at 7 percent. The annualized cost will be approximately $0.8 million discounted at 7 percent. The following table shows the estimated 10-year costs of the final rule.

TOTAL 10-YEAR DISCOUNTED COSTS

[2020 dollars]

Category	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Development of Certification Program	982,914	1,010,875	139,945	118,505
Certification Eligibility Requirements	55,345	61,945	7,880	7,262
Recertification Eligibility Requirements	65,831	83,877	9,373	9,833
Training	707,334	812,820	100,708	95,287
Knowledge Testing	233,988	281,581	33,315	33,010
Vision and Hearing	1,586,913	1,909,692	225,941	223,874
Monitoring Operational Performance	256,017	305,956	36,451	35,867
Railroad Oversight Responsibilities	267,530	326,714	38,090	38,301
Certification Card	26,832	32,289	3,820	3,785
Petitions and Hearings	38,667	46,209	5,505	5,417
Government Administrative Cost	1,192,651	1,342,668	169,807	157,402
Total	5,414,022	6,214,626	770,835	728,544

Legal Authority

Pursuant to the RSIA, the Secretary was required to submit a report to Congress addressing whether certification of certain crafts or classes of employees, including dispatchers, was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.[3] If the Secretary determined it was necessary to require the certification of certain crafts or classes of employees to reduce the number and rate of accidents and incidents or to improve railroad safety, section 402 of the RSIA stated the Secretary may prescribe such regulations. The Secretary delegated this authority to the Federal Railroad Administrator.[4] In response to the RSIA, the Secretary submitted a report to Congress on November 4, 2015,[5] stating that, based on FRA's preliminary research, dispatchers and signal employees were potentially the most viable candidate railroad crafts for

[3] *See also* 49 U.S.C. 20103 (providing FRA's general authority to ''prescribe regulations and issue orders for every area of railroad safety'').

[4] 49 CFR 1.89.

[5] FRA–2022–0019–0001.

certification. Based on the analysis in Section II below, the Federal Railroad Administrator has determined that it is necessary to require the certification of railroad dispatchers to improve railroad safety.

II. Background

A. Roles and Responsibilities of Dispatchers

Railroad dispatchers play an integral role in railroad safety and operations. They are responsible for allocating and assigning track use, ensuring that trains are routed safely and efficiently, and ensuring the safety of personnel working on and around railroad track. These are cognitively complex tasks that require integrating multiple sources of information in a dynamic context (*e.g.,* information from train schedules, computer displays of current track state, radio communication with various personnel such as locomotive engineers, and in some cases, projecting into the future (*e.g.,* estimating when the train will arrive)) and balancing multiple demands placed on track use (*e.g.,* balancing the need for maintenance-of-way workers to have time to work on the track with the need to make sure that the track will be clear when a train is anticipated to arrive). Some of the main tasks [6] dispatchers perform involve: operation monitoring (monitoring a computerized train dispatching model board); information collection and data entry (collecting information about slow orders and any blocking protection required by railroad workers on the track); communication (playing an important role in roadway worker planning and protection); emergency response (working to limit the damage to human life and property during an emergency); and knowledge of territory (knowing the specific characteristics of the territory assigned to them).

Over the past five to ten years, the job of a railroad dispatcher has become more complex and demanding. Railroads have decreased the number of dispatchers over the years, and the territory for which an individual dispatcher is responsible is expanding as a result. Also, with the advancement of Positive Train Control (PTC), dispatchers must understand the interface between the computer-aided dispatching system and the train control system, with respect to the safe movement of trains and other on-track equipment. Dispatchers need to understand the operating rules applicable to the train control system, including granting permission for movement and protection of roadway workers; unequipped trains; trains with failed or cut-out train control onboard systems; control system fails; and providing for safe operations under the alternative method of operation. Managing PTC failures over the three years since PTC's full implementation has proven to be one of the more challenging new responsibilities for dispatchers because dispatchers must rapidly comprehend malfunctions in PTC systems and implement alternate strategies to ensure continued safety. This represents a significant shift from the traditional responsibilities of dispatchers, positioning them as key figures in the management of crises within railroad systems. To effectively address these challenges, it is imperative that dispatchers undergo specialized training concerning the functionalities of PTC systems and the appropriate protocols for handling failures. The role of dispatchers in coordinating with train crews is essential to secure a unified response to incidents involving PTC failures. This evolution in the responsibilities of dispatchers highlights their role in maintaining safe railroad operations amid the challenges posed by the introduction of sophisticated PTC technologies and the occurrence of system failures.

In addition, the availability of affordable computer systems has made computer-aided dispatching (CAD) feasible for many railroads. The improved communications systems led to the acceptance of radio transmitted directives in place of the traditional paper train orders that had been previously used. These changes in communications and signal technology have also resulted in the closing of block towers and eliminating the job of tower operator, a job that was often on the career path to becoming a dispatcher.

Today, dispatchers are likely to use multiple computer screens and electronic equipment, in addition to a communications system. However, a short line railroad may still use hand-written or verbal authorities to move trains across dark (unsignalled) territory. The industry's adoption of new dispatching technology, changes in operating rules and methods of operation, and railroad industry restructuring all have potential safety consequences. Additionally, excessive workloads and increases in occupational stress could result from any of these factors.

B. FRA History of Certification

On January 4, 1987, an Amtrak train collided with a Conrail train in Chase, Maryland, resulting in 16 deaths and 174 injuries. At the time, it was the deadliest train accident in Amtrak's history. The subsequent investigation by the National Transportation Safety Board concluded that the probable cause of the accident was the impairment of the Conrail engineer who was under the influence of marijuana at the time of the collision.[7]

Following this accident, Congress passed the Rail Safety Improvement Act of 1988, Public Law 100–342, 4, 102 Stat. 624, 625 (1988), which instructed the Secretary to ''issue such rules, regulations, orders, and standards as may be necessary to establish a program requiring the licensing or certification of any operator of a locomotive, including any locomotive engineer.'' On June 19, 1991, FRA published a final rule establishing a certification system for locomotive engineers and requiring railroads to ensure that they only certify individuals who met minimum qualification standards.[8] FRA prescribed a certification system where the railroads issue the certificates as opposed to a government-run licensing system. This final rule, published in 49 CFR part 240 (part 240), created certification requirements for engineers that addressed various areas, including vision and hearing acuity; training, knowledge, performance skills; and prior safety conduct.

Seventeen years later, Congress passed the RSIA, which mandated the creation of a certification system for conductors. On November 9, 2011, FRA published a final rule requiring railroads to have certification programs for conductors and to ensure that all certified conductors satisfy minimum Federal safety standards.[9] The conductor certification rule, published in 49 CFR part 242 (part 242), was largely modeled after part 240 with some deviations based on the different job classifications. Part 242 also

[6] As part of a contract with FRA, Foster-Miller, Inc., conducted research to develop a tool for assessing railroad dispatcher task load. Task load is defined as the average time demanded of a dispatcher in carrying out all job-related tasks at a particular desk, over a specified period of time (*e.g.,* one shift). Stephen J. Reinach, Toward the Development of a Performance Model of Railroad Dispatching 2042–46 (Proceedings of the Human Factors and Ergonomics Society 50th Annual Meeting, 2006). A copy of this report can be found at *https://railroads.dot.gov/elibrary/proceedings-human-factors-and-ergonomics-society-50th-annual-meeting-2006.*

[7] Railroad Accident Report: Rear-end Collision of Amtrak Passenger Train 94, the Colonial and Consolidated Rail Corporation Freight Train ENS–121, on the Northeast Corridor, Chase, Maryland, January 4, 1987 144 (Nat'l Transp. Safety Bd. 1988).

[8] 56 FR 28227 (June 19, 1991).

[9] 76 FR 69801 (Nov. 9, 2011).

included some organizational improvements which made the regulation more streamlined than part 240.

C. Statutory Background for Dispatcher Certification

In addition to requiring certification for conductors, the RSIA required the Secretary to submit a report to Congress addressing whether certain other railroad crafts or classes of employees would benefit from certification. Specifically, section 402 of the RSIA required that the Secretary issue a report to Congress ''about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.'' As part of that report, section 402 specifically required the Secretary to consider dispatchers as one of the railroad crafts for certification. Pursuant to the report to Congress, section 402 authorized the Secretary to ''prescribe regulations requiring the certification of certain crafts or classes of employees that the Secretary determines . . . are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.''

D. Report to Congress

On November 4, 2015, the Secretary submitted the report to Congress required under the RSIA. The report stated that, based on FRA's preliminary research, dispatchers and signal repair employees were the most viable candidates for certification. In reaching this determination with respect to dispatchers, the Secretary cited a variety of factors.

The report noted that dispatchers perform safety-sensitive work as shown by dispatchers being covered under the hours-of-service laws; and they are subject to regular and pre-employment random drug and alcohol testing. In 2012 and 2013, dispatchers had the highest pre-employment positive drug testing rate among all crafts. Annual drug and alcohol testing data submitted to FRA in 2012 and 2013 showed a 0.68-percent random positive drug testing rate and a 0.79-percent pre-employment positive drug testing rate for dispatch employees compared to a 0.48-percent random positive drug testing rate and a 0.46-percent pre-employment positive drug testing rate for signal employees; and a 0.49-percent random positive drug testing rate and a 0.55-percent pre-employment positive drug testing rate for train and engine service employees.[10] The report noted that 49 CFR parts 240 and 242 require a five-year alcohol and drug background check as well as disqualification of employees for specified alcohol and drug test violations and for refusing such testing. If such requirements were included in a dispatcher certification program, it could help prevent dispatchers with active substance abuse disorders from ''job hopping'' from one employer to another and reduce the safety risk of having individuals with untreated substance abuse disorders working as dispatchers.

Another important factor in the report was the complicated nature of the work dispatchers perform to ensure the safety and efficiency of railroad operations. Dispatchers are responsible for allocating and assigning main track use to trains from their own employer as well as trains from other railroads. They are also responsible for the safety of roadway workers working on or near track.[11] The report summarized the demanding nature of dispatching by stating that it entails performing cognitively complex tasks that require rapid decision making, projecting into the future, and balancing numerous demands on track use.

Additionally, the report cited a ''great amount of turnover'' in the nationwide train dispatching workforce, resulting in a less experienced workforce, as further support for requiring certification. Finally, the report found that, except for train and engine crews, no function of railroad operations is more critical to safety than dispatching. The accumulation of these factors led to the report's conclusion that dispatchers, along with signal repair employees, were the most viable candidates for certification due to their safety-critical roles.

E. RSAC Working Group

In March 1996, FRA established the Railroad Safety Advisory Committee (RSAC), which provides a forum for collaborative analysis to inform FRA's rulemaking and program development activities. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task.

On April 21, 2017, a task statement regarding certification of dispatchers was presented to RSAC by email, but no vote was taken. On April 24, 2019, RSAC accepted a task (No. 19–02) entitled ''Certification of Train Dispatchers.''[12] The purpose of the task was ''[t]o consider whether rail safety would be enhanced by developing guidance, voluntary standards, and/or draft regulatory language for the certification of train dispatchers.'' The task called for the RSAC Train Dispatcher Certification Working Group (Working Group) to perform the following:

—Review critical tasks performed by dispatching employees for safe train operations, particularly with the introduction of PTC technology.
—Review training, duration, content, and methodology for new hire and continuing education.
—Review background checks designed to prevent dispatching employees with active substance abuse disorders from ''job-hopping'' from one employer to another.

The task statement also asked the Working Group to address the following issues, if appropriate:

—What requirements for training and experience are appropriate?
—What classifications of dispatchers should be recognized, if any?
—To what extent do existing requirements and procedures for

[10] As noted in the NPRM, testing results submitted to FRA in 2020 and 2021 showed a 0.94-percent random violation rate (drug and alcohol positives and refusals) and a 0.85-percent pre-employment violation rate for dispatch employees compared to a 0.81-percent random violation rate and a 0.79-percent pre-employment violation rate for signal employees; and a 0.53-percent random positive drug testing rate and a 1.06-percent pre-employment positive drug testing rate for train and engine service employees. Testing results submitted to FRA in 2022 showed a 0.86-percent random violation rate (drug and alcohol positives and refusals) rate and a 5.45-percent pre-employment violation rate for dispatch employees compared to a 1.10-percent random violation rate and a 0.46-percent pre-employment violation rate for signal employees; and a 0.69-percent random positive drug testing rate and a 1.48-percent pre-employment positive drug testing rate for train and engine service employees.

[11] Train dispatchers bear a substantial responsibility for the safety of roadway workers who perform maintenance and repair operations on or near railroad tracks. They engage in detailed coordination with work crews to establish protected work zones and regulate train movements accordingly. Dispatchers issue authorizations granting roadway workers exclusive access to tracks within designated zones and they maintain continuous communication with workers, providing updates on train locations and potential risks.

[12] At the same meeting, RSAC also accepted a task (No. 19–03) titled ''Certification of Railroad Signal Employees.'' A separate RSAC Working Group was formed to address this task, and FRA plans to issue a related final rule that would establish certification requirements for signal employees.

certification of locomotive engineers and conductor certification provide a model for dispatcher certification?

—What types of unsafe conduct should affect a train dispatcher's certification status?

—Do the existing locomotive engineer and conductor certifications provide an adequate model for handling appeals from decertification decisions of the railroads?

The Working Group, which included representatives from the Association of American Railroads (AAR), the American Public Transportation Association (APTA), the American Short Line and Regional Railroad Association (ASLRRA), the American Train Dispatchers Association (ATDA), the Brotherhood of Railroad Signalmen (BRS), SMART Transportation, Commuter Rail Coalition, and National Railroad Construction & Maintenance Association, held its first and only meeting on September 4, 2019, in Washington, DC. At this meeting, the Working Group reviewed the task statement from the RSAC, discussed some of the safety-critical tasks performed by dispatchers, and debated whether certification of dispatchers would be beneficial to railroad safety. At the end of the meeting, action items were assigned, and the next meeting was tentatively scheduled for January 2020.

However, on December 16, 2019, the presidents of ATDA, BRS, and the International Brotherhood of Electrical Workers (IBEW) sent a letter to the FRA Administrator requesting that this RSAC task be withdrawn from consideration at this time. The letter stated the unions were currently involved in numerous activities and were not able to give the task proper attention. AAR and ASLRRA advised the unions that they were not opposed to this request. In response to this letter, FRA withdrew this task from RSAC, and the Working Group became inactive.

F. Stakeholder Outreach

In 2021, FRA revisited the issue of establishing certification requirements for dispatchers. The agency assembled subject matter experts from FRA, ATDA, IBEW, and BRS to exchange facts and information regarding the tasks performed by dispatchers. These parties met virtually several times between May 5, 2021 and June 30, 2021.

As part of FRA's outreach to these labor organizations, a list of tasks performed by dispatchers was developed. These tasks generally involved: track authorities; mandatory directives; track worker protection; emergency response coordination; or incident management. FRA reviewed each task to determine whether correctly performing the task was critical to railroad safety; what were the potential consequences if errors were made while performing the task; and whether there were any recent examples of issues or concerns with respect to the task. After performing this analysis, FRA concluded that the vast majority of tasks performed by dispatchers (80–90% of the listed tasks) were critical to railroad safety with potentially catastrophic consequences, such as accidents, injuries, and/or deaths, if the tasks were not performed properly. In addition, because dispatchers provide incident management and emergency response coordination, FRA concluded that by properly performing their tasks, dispatchers can help reduce the consequences of accidents and mitigate injuries.

During these virtual meetings, the benefits of certification based on the experience of stakeholders with engineer and conductor certification under 49 CFR parts 240 and 242 were also discussed. Some of the main benefits of certification that were identified included:

—Creating a minimum standard for training to ensure that the training encompasses all skills and proficiencies necessary to properly perform all safety-related dispatcher functions;

—Establishing a record of safety compliance that will follow a dispatcher if they wish to become certified by another railroad and that can be used to review a dispatcher's performance and potential training needs;

—Requiring certain safety checks, such as identifying active substance abuse disorders, that can minimize the risks posed by job hopping; and

—Establishing a system for individuals to dispute a railroad's decision to deny or revoke certification with the aim of creating a fair and consistent process for all parties.

Further, some labor unions noted that they had witnessed industry trends to reduce the length and level of training for dispatchers which would make certification even more beneficial. Based on these meetings, FRA concluded that requiring certification for dispatchers would be an important tool to ensure dispatchers are adequately trained and qualified; have a documented record of performance; and are not able to job hop without a new employer having knowledge of the dispatcher's safety performance record.

Following this initial outreach, FRA held a follow-up conversation with ATDA and IBEW, on March 3, 2022, and ATDA and IBEW informed FRA of elements that they believed would be beneficial in a dispatcher certification program. During this conversation, which was held in videoconference format, FRA asked the attendees to provide individualized feedback on how similar or different a dispatcher certification rule should be to FRA's locomotive engineer and conductor certification rules found in 49 CFR parts 240 and 242.

FRA heard that the agency needs to ensure that comprehensive training is provided to dispatchers, as the current training is inadequate. FRA also heard that railroads are not providing enough training on new technology, and in some cases, training only consists of a PowerPoint presentation or watching a video. It was also noted that dispatchers are often told to ask their managers if they have questions, but managers are not always knowledgeable about the craft and often do not have sufficient expertise to answer such questions.

On March 7, 2022, FRA had a conversation with the railroad industry, including Norfolk Southern Railway (NS), AAR, and ASLRRA. During this conversation, which was conducted in a videoconference format, FRA also asked for individualized feedback on how FRA's locomotive engineer and conductor certification regulations in 49 CFR parts 240 and 242 could be improved upon with respect to dispatcher certification. Specifically, FRA asked for feedback on any regulatory provisions in 49 CFR parts 240 and 242 that, in their experience, may have been difficult to implement, as well as whether FRA should explore any changes to these regulatory provisions.

AAR expressed opposition to FRA's proposal to issue regulations requiring certification of dispatchers, arguing that there was not a safety benefit to certification. In addition, NS questioned the need for certification regulations in the absence of any identified gaps in coverage by existing railroad training programs. ASLRRA expressed concern that FRA's proposal to issue regulations requiring dispatcher certification would result in a large paperwork burden with little benefit.

After this conversation, FRA provided a short list of written questions to AAR and ASLRRA. While AAR did not provide additional feedback in response to FRA's list of questions, ASLRRA responded to FRA's list of written questions by email on April 13, 2022, a

copy of which has been placed in the docket.[13]

On March 10, 2022, FRA staff had a follow-up conversation with ATDA and IBEW to receive information on the types of errors and operating practice violations that should result in a railroad revoking a dispatcher's certification. During this conversation, which was conducted in videoconference format, FRA heard that a dispatcher's certification should not be revoked during an operations test, and that a person training a dispatcher should not have their certification revoked if a person they are training commits a revocable offense, as long as the trainer took appropriate action. However, a list of prospective revocable events was not generated during this meeting.

G. Notice of Proposed Rulemaking

On May 31, 2023, FRA published the Notice of Proposed Rulemaking (NPRM) proposing the establishment of dispatcher certification and provided commenters 60 days to file comments.[14] On July 5, 2023, FRA extended the comment period by an additional 30 days.[15] On August 22, 2023, FRA extended the comment period again, this time by an additional 15 days, until September 14, 2023.[16]

III. Discussion of Comments and FRA's Conclusions

A. Overview of Comments

FRA received a total of 33 comments from railroads, labor organizations, trade associations, a consulting company, and individual commenters. Of the commenters who stated a clear position either in support of or in opposition to this rule, nine commenters expressed their support for this rule and seven commenters stated their opposition to this rule. The order of the topics or comments discussed in this document is not intended to reflect the significance of the comment raised or the standing of the commenter. Additionally, this summary of comments is intended to provide both a general understanding of the overall scope and themes raised by the commenters, as well as give some specific descriptions to provide context. Not every comment is described in this summary. Comments addressing specific sections of this rule are discussed in the Section-by-Section Analysis. Comments regarding the proposed RIA are addressed in the RIA to the final rule.

B. Comments Supporting the NPRM

FRA received several comments that were generally supportive of requiring dispatcher certification. These comments came from labor organizations, a consulting company, and individual commenters.

1. Labor Organizations and Consulting Company

In stating its support for the proposed rule, the Transportation Trades Department, AFL–CIO (TTD) asserted that safety improvements have occurred as a result of locomotive engineer and conductor certification. TTD also noted that PTC and other technological advancements have increased the complexity of train dispatching, but the training standards applied across railroads are not adequately meeting this challenge. TTD stated that Class I railroads in particular ''are not providing a sufficient quality or amount of training for new train dispatchers to learn how to do their jobs'' and the end result is that many new dispatchers are having to train themselves.[17]

The International Association of Sheet Metal, Air, Rail and Transportation Workers Transportation Division (SMART–TD) also referenced the success of locomotive engineer and conductor certification in its comment. Specifically, it noted that certification has had a positive effect on how engineers and conductors view continuing education. According to SMART–TD, what was previously considered an inconvenience by crew members is now taken seriously as a necessity to maintain their certification status. Additionally, this time spent focusing on continuing education has helped ensure crew members perform their duties as safely as possible.[18]

In ATDA's comment, the union acknowledged its long support for dispatcher certification. In doing so, the union noted the safety-critical nature of the dispatcher position that has only increased in recent years with the consolidation of railroad operations, the elimination of certain positions, and expanding use of new technologies such as PTC and wayside equipment defect detectors. These factors have led to dispatchers being assigned larger territories than ever before. ATDA has noted that, despite the increased complexity of the train dispatcher position, there has been ''a dramatic de-emphasis by carriers on the importance of these roles and the fundamental training and qualifications necessary to carry out the required duties and responsibilities in a safe and efficient manner.''[19] ATDA indicated new dispatchers typically receive abbreviated training and are rushed into their positions due to staffing shortages. According to ATDA, ''[n]owhere has the inadequacy of proper training and qualifications been more apparent than in the lack of value placed on territory specific qualifications or knowledge of the physical characteristics of the territory the dispatcher is responsible for.''[20] This was shown by a recent FRA audit of NS that found that NS dispatchers were not familiar with the locations and types of wayside defect detectors on their territory and that NS's dispatcher training program did not have any territory-specific familiarization requirements.[21] ATDA stated this problem is not confined to NS, as it has received many reports from its members of having to work on territories they were either not trained on or had not worked on in years. ATDA asserts that dispatcher certification will address these concerns by ensuring that railroads place a greater emphasis on training dispatchers especially with respect to physical characteristics knowledge and familiarization.

TTD also referred to the deficiencies found during the NS audit as further support for this rulemaking. TTD noted that dispatcher certification would help address these deficiencies by improving the training dispatchers receive, which would have an overall positive effect on railroad safety.[22] IBEW continued the theme of concern expressed by other labor organizations about the current state of dispatcher training. IBEW mentioned that dispatchers perform safety-sensitive work, and an untrained or undertrained dispatcher is more prone to commit an error which could have grave safety implications. IBEW stated that this rule would provide administrative oversight to dispatchers, to make sure they are trained effectively, practically, and consistently across the industry. In doing so, IBEW contends this rule will provide for a safer rail network.[23] Network Rail Consulting (NRC) commented that it agreed with the approach FRA took for this rule and it welcomed FRA's development of

[13] FRA–2022–0019–0002.

[14] 88 FR 35574 (May 31, 2023).

[15] 88 FR 42907 (July 5, 2023).

[16] 88 FR 57043 (Aug. 22, 2023).

[17] FRA–2022–0019–0037.

[18] FRA–2022–0019–0035.

[19] FRA–2022–0019–0038.

[20] FRA–2022–0019–0038.

[21] FRA, Norfolk Southern Safety Assessment (2023), *available at railroads.dot.gov/elibrary/norfolk-southern-safety-assessment.*

[22] FRA–2022–0019–0029.

[23] FRA–2022–0019–0039.

minimum standards for training, qualification, and testing of dispatchers.[24]

2. Individual Commenters

One commenter stated that certification will ensure the integrity of train dispatching as a profession, and that dispatchers meet a high standard of knowledge and performance through the training requirements in this rule. This commenter also suggested this rule will encourage the mentorship of younger, less experienced dispatchers by more experienced dispatchers.[25] Another commenter expressed their support for this rule calling dispatcher certification an ''excellent idea'' that will help prevent accidents like the 2016 accident in Germany where 11 people died and 80 people were injured when two trains collided because a dispatcher had been playing a game on their cell phone.[26] One individual supported certification because it enhances public safety by ensuring ''that dispatchers are competent in their role and function through standard hiring practices, periodic evaluations, health and safety requirements and exhibited performance.'' [27] This is particularly important given that dispatching is a complex job that is ''multi-faceted, mentally demanding, and challenging to perform.'' [28] Another commenter simply stated that dispatchers should be certified.[29]

FRA's Response

FRA appreciates the comments received from labor organizations, NRC, and individuals expressing their support for this rule. These comments largely corroborate FRA's background, provided above and in the NPRM, describing the issues dispatchers are facing in the field and why dispatcher certification would be beneficial to railroad safety. In particular, the increasing complexities of railroad dispatching combined with the expressed concerns about the current state of dispatcher training warrant greater oversight. By placing more stringent requirements on the training dispatchers receive and by ensuring that dispatchers are properly qualified on the territories they work on, this rule promotes railroad safety. Also, as TTD and SMART–TD specifically noted, the safety benefits of certification have already been established through the success of locomotive engineer and conductor certification. Therefore, FRA agrees with these commenters that this rule will be beneficial to rail safety.

C. Comments Opposing the NPRM

FRA received various comments from trade associations, a policy center, and individuals opposing the NPRM. These comments address a range of categories that are discussed below.

1. Comments Alleging That There Is No Safety Justification for This Rule as the Cost-Benefit Analysis Does Not Support Requiring Dispatcher Certification

FRA received several comments related to the costs and benefits of the proposed rule. Comments were received from AAR, ASLRRA, and the Washington Legal Foundation (WLF) who each commented that the costs of this rule outweighed the benefits. A more detailed response to these comments is provided in the RIA. An individual commenter added that railroad dispatchers are already highly qualified and there is no need for additional costly regulations as he only experienced two incidents in his career where a dispatcher made a mistake that resulted in an investigation.[30]

AAR and ASLRRA commented on several of FRA's cost estimates for provisions of the rule. ASLRRA commented that FRA's estimates for the time to develop the certification programs were low. They suggested that it would take 550 hours for ASLRRA to develop a model program and 19 hours per small railroad to implement. For unannounced compliance tests (monitoring operational performance), AAR and ASLRRA estimated that the time per supervisor would be much more than the two hours per year that FRA estimated. Regarding dispute resolution hearings, AAR and ASLRRA noted that the cost assessments for hearings are underestimated, and the actual cost would amount to 22 percent of the total estimated costs of the proposed rule.

AAR and ASLRRA also alleged that FRA underestimated wage-related costs by using the 2020 railroad wage rates which ''do not take into account the 24% wage increase that railroad employees received as part of the 2022 collective bargaining process or the 10.7% increase in Federal government employee pay rates.'' [31]

ASLRRA stated that the rule fails to assess how this rule would impact short lines and failed to include an Initial Regulatory Flexibility Assessment which discussed the burden on small entities. ASLRRA also stated that the rule would have a significant economic impact on a substantial number of small entities.

FRA also received comments pertaining to the estimated benefits from the RIA associated with the proposed rule. AAR and ASLRRA commented that most of the accidents FRA claimed dispatchers may have contributed to in the NPRM RIA either had no dispatcher involvement or were not caused by dispatcher error resulting in an overestimate of the benefit assessment.

AAR and ASLRRA alleged in their joint comment that there was no safety justification for this rulemaking. In support of this contention, they claimed that ''[t]he last decade was the safest on record for railroads.'' [32] The associations cited to various statistics showing a reduction in rail accidents since 2000.

Lastly, APTA stated in their comment that FRA failed to account for additional pay that dispatchers may receive once certified.

FRA's Response

FRA received several comments regarding cost estimates of certain provisions of the rule. Based on ASLRRA's comment regarding the time to develop a certification program, FRA has revised the estimated time for ASLRRA to develop a model program to 550 hours and increased the estimate for small railroads to implement from 8 hours to 15 hours. FRA has now only accounted for one template program produced by ASLRRA. Holding companies will likely use the template program developed by ASLRRA, instead of producing their own template, as discussed in the RIA associated with the NPRM. In addition, FRA has reassessed the costs for petitions and hearings based on comments from AAR and ASLRRA. The categories of employees have been revised and estimates have been increased. FRA has determined these estimates by looking at the number of petitions and hearings associated with the conductor and engineer certification programs. This baseline was then adjusted for the population size of dispatcher employment. Additionally, government costs for petitions and hearings have been increased, and now include more categories of employees involved in the process.

With respect to AAR and ASLRRA's comment that the time estimate for supervisors on unannounced compliance tests is too low, FRA is maintaining its estimate as supervisors

[24] FRA–2022–0019–0033.
[25] FRA–2022–0019–0007.
[26] FRA–2022–0019–0032.
[27] FRA–2022–0019–0034.
[28] FRA–2022–0019–0034.
[29] FRA–2022–0019–0011.
[30] FRA–2022–0019–0006.
[31] FRA–2022–0019–0041.
[32] FRA–2022–0019–0041.

should already be doing this as part of their regular duties, and to comply with other FRA regulations. The two hours per year is the additional time for paperwork or to organize this monitoring throughout the year. Since the supervisor currently does this monitoring and the dispatcher will be performing their normal duties, no additional time will be required due to this regulation.

In response to AAR and ASLRRA's comments on the 2020 wage rates used in the NPRM, FRA notes that the wage rates used during NPRM drafting were the most recent available data, as provided by the Surface Transportation Board's wage data series and General Schedule pay scales. Regarding ASLRRA's comment on an Initial Regulatory Flexibility Assessment, FRA, in the proposed rule, conducted an Initial Regulatory Flexibility Assessment and estimated the percentage of average annual revenue that the rule would impose on small entities. FRA estimated that 140 railroads would be impacted by this regulation, which may be considered a substantial number, but the impact will not be significant. As stated in the Final Regulatory Flexibility Assessment and Certification, in the final rule, FRA has estimated the costs to be only 0.02% of average annual revenue for Class III railroads. Therefore, FRA is certifying that this final rule will not have a significant economic impact on a substantial number of small entities. On the issue of FRA's estimate of benefits, FRA has decreased the number of accidents/incidents from ten (in the NPRM RIA) to one accident/incident under the ''May Have Contributed'' category in the RIA associated with this final rule based on the comments received from AAR and ASLRRA.

Turning to the contention from AAR and ASLRRA that there is no safety justification for this rule, FRA disagrees with the premise that because railroad safety has improved over the last 20 years, the agency does not need to take actions that could further improve safety. Moreover, the associations neglected to mention in their comment that one of the changes in the railroad industry over the past few decades has been the introduction of certification requirements. The locomotive engineer certification requirements in part 240 went into effect in 1991,[33] and the conductor certification requirements in part 242 became effective just over a decade ago in 2012.[34] Thus, it stands to reason that certification has been one of the factors that has improved railroad safety in recent decades and instituting such requirements for dispatchers could lead to similar improvements in the future.

Finally, in response to APTA's comment on certification pay, FRA does not think that pay will increase solely due to certification. Salary negotiations are based on many factors and are typically long-term agreements that would not be impacted by one individual regulation.

2. Comments Relating to RSIA Authority

In their joint comments on the proposed rule, AAR and ASLRRA challenge FRA's assertion that section 402 of the RSIA authorized the Secretary to prescribe regulations requiring the certification of dispatchers. AAR and ASLRRA assert that Congress only authorized DOT to issue regulations requiring certification if the Secretary determined in a report to Congress that regulations are ''necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.'' [35] AAR and ASLRRA contend the Secretary failed to make such a determination in the 2015 report to Congress.

FRA's Response

While section 402 of the RSIA required the Secretary to issue a report to Congress ''about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety,'' it did not require the Secretary to make an official determination in this report that the issuance of dispatcher certification regulations was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety, as a necessary precondition to the initiation of this rulemaking.

Section 402 of the RSIA authorizes the Secretary (and by delegation, FRA) to prescribe regulations requiring the certification of certain crafts or classes of railroad carrier employees (or railroad carrier contractor or subcontractor employees) ''pursuant to'' the report to Congress that was required by section 402(b) of the RSIA. The phrase, ''pursuant to,'' is defined to mean ''in a way that agrees with or follows (something).'' [36] Thus, in section 402 of the RSIA, Congress authorized FRA to prescribe regulations that are consistent with the 2015 report to Congress. In the 2015 report, the Secretary stated that dispatchers were potentially the most viable candidates for certification due to the complex safety-critical work they perform and the high turnover in the dispatching force which was contributing to a less experienced workforce. The report also noted that dispatcher certification could improve safety by preventing individuals with active substance abuse disorders from working as dispatchers.[37] Based on the report's findings and the agency's outreach to stakeholders,[38] FRA determined that the number and rate of accidents and incidents would be expected to decrease and railroad safety would be expected to improve if it required certification of dispatchers.

Moreover, FRA notes that it has broad authority to ''prescribe regulations and issue orders for every area of railroad safety,'' including this regulation.[39]

3. Comments Stating That Contractors and Subcontractors Should Be Responsible for Certifying Their Own Employees

In AAR and ASLRRA's joint comment, they state that contractors should be responsible for certifying their own employees, as they are in the best position to implement and manage a certification program of their employees, and other parts of FRA's regulations allow for contractors to have their own programs. They further note that dispatching is highly specialized work and that many short line railroads do not have the requisite expertise to oversee a dispatcher certification program. They also contend it would be ''an inefficient waste of resources for dozens of railroads to certify the same individual in any given period.'' [40] Lastly, AAR and ASLRRA state that ''[r]ailroads are equally incentivized to ensure safety of dispatcher operations no matter which party is responsible for implementing and managing the dispatcher certification program.'' [41]

In a separate comment, ASLRRA noted that no other part of FRA's regulations requires a railroad to determine whether a non-employee has the necessary qualifications to perform a task. ASLRRA also criticized the NPRM for not providing guidance on how a small railroad should coordinate

[33] 56 FR 28227, 28228 (June 19, 1991).

[34] 76 FR 69802 (Nov. 9, 2011).

[35] Rail Safety Improvement Act of 2008, Public Law 110–432, section 402, 122 Stat. 4848, 4884 (2008).

[36] *www.britannica.com.*

[37] FRA–2022–0019–0001.

[38] *See* Section II.F for a discussion of FRA's outreach to stakeholders.

[39] 49 U.S.C. 20103(a). The Secretary has delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89.

[40] FRA–2022–0019–0041.

[41] FRA–2022–0019–0041.

with other railroads if a contractor dispatcher gets decertified on their railroad.[42]

FRA also received comments regarding this issue that did not express support for or opposition to the NPRM, but requested clarification on how this rule would work in practice. One individual asked why this rule did not apply to training organizations, contractors, and learning institutions. This person also asked whether railroads would be responsible for keeping the performance records of dispatchers who are contractors.[43] Atlantic Railways submitted a comment asking whether a dispatch center that dispatches for several railroads can create a model program that can be adopted by all the railroads that use that dispatch center and whether such a model program has been proposed.[44]

FRA's Response

After giving this issue careful consideration, consistent with the NPRM, and consistent with FRA's certification regulations for locomotive engineers and conductors in parts 240 and 242, FRA maintains that railroads are in the best position to be held responsible for establishing and implementing a dispatcher certification program. If a railroad has dispatch tasks being performed over its track, then it should be held responsible for ensuring those tasks are being performed by individuals who meet the necessary qualifications, even if such persons are not employees of the railroad. Even though AAR and ASLRRA stated in their joint comment that railroads would be equally incentivized to make sure their dispatching operations are safe regardless of who is responsible for the certification program, the associations offer no support for this position. To the contrary, it seems that a railroad would make a greater effort to ensure the safety of its dispatching operations if it would be held accountable for any failures to comply with this rule.

With respect to the associations' concern that some railroads, especially short line railroads, do not have the expertise to oversee a dispatcher certification program, part 245 specifically allows for the involvement of third parties in this process. Sections 245.107(b)(1)(iii) and 245.119(b) explicitly note that third parties may perform the training required in a certification program. In fact, there is nothing in this rule that prevents a contractor or other third party from drafting, implementing, and managing a railroad's dispatcher certification program. Therefore, railroads that do not have the requisite internal expertise are allowed to hire a contractor to perform these duties. These contractors can be as actively involved in the railroad's day-to-day compliance with this rule as the railroad desires, but because FRA is in the business of regulating railroads, the agency feels that the responsibility for this compliance should ultimately lie with the railroad. Even though FRA allows for contractors to have their own training programs under 49 CFR part 243 (part 243), certification is different, as will be discussed below, and FRA's other certification regulations in parts 240 and 242 only provide for railroads to have certification programs. Thus, FRA intends to maintain this consistency across its certification regulations.

AAR and ASLRRA also allege that this rule would result in an inefficient waste of resources as dozens of railroads would have to certify the same individual. However, this comment ignores the streamlined process for certifying dispatchers provided by § 245.125 which allows a railroad to rely on certain certification determinations made by another railroad. In such situations, the only determinations that the certifying railroad would be required to make under § 245.125(b) are that the other railroad's certification is still valid; that the dispatcher received training on the physical characteristics of the territory; and that the dispatcher has demonstrated the necessary knowledge of the railroad's operating rules, territory, dispatch systems, and technology. Thus, for many contractor dispatchers who dispatch for dozens of railroads, it should be an expedited process for them to obtain the necessary certifications from other railroads. Furthermore, since many of these contractors dispatch for several railroads from a single facility, it should further expedite the process since most, if not all, of their relevant certification files should be in a central location. Despite the associations' critique of this process, the alternative would be to risk having dispatchers working on territories they have not been trained on and do not have the requisite knowledge to dispatch over.

In response to ASLRRA's comment that no other part of FRA's regulations require railroads to make determinations about a non-employee's qualifications, FRA notes that is inaccurate. FRA acknowledges that while it is more common for railroads to use contractors for dispatching, some railroads hire contractors to serve as locomotive engineers and conductors on their trains. In such situations, the railroad would still have to certify these non-employees under part 240 or part 242. With respect to ASLRRA's comment seeking guidance on how small business railroads should coordinate with other railroads when a contractor dispatcher is decertified, FRA does not see a need to issue such guidance. When a dispatcher's certification is revoked, § 245.213(c)(1) places the onus on the dispatcher, not the revoking railroad, to notify any other railroad the person has a dispatcher certificate with, of the revocation. The only instance where this rule would require a railroad to share information about a dispatcher's revocation with another railroad is if the railroad received a written request pursuant to § 245.113(c). However, in such circumstances, the railroad would be notified in writing of the need to share this information with another railroad, so further guidance from FRA is unnecessary.

Turning to the questions FRA received from other commenters on this topic, a railroad is required to retain all information required under § 245.203 even if a dispatcher is a contractor. As for Atlantic Railways' question, a dispatch center would be allowed to create a model program that could be used by several railroads. FRA is not aware of any model programs currently in development, but FRA imagines that several entities will be creating such programs once this rule goes into effect.

4. Comments Related to Evidence That This Rule Would Limit Job Hopping

In their comments on the proposed rule, AAR and ASLRRA challenged the assertion that dispatchers switch jobs more frequently than other crafts and stated that FRA presented no evidence in support of this claim. They also contended that because dispatchers become experts on the safe movement of trains through a specific territory, there is a strong disincentive for them to change jobs and have to learn a new territory. Lastly, in addition to questioning the accuracy of the positive alcohol and drug test rates for dispatchers referenced in the 2015 report to Congress, AAR and ALSRRA argue that dispatchers with substance abuse disorders are already screened through pre-employment drug and alcohol testing and the railroads' continuous monitoring of dispatchers.

[42] FRA–2022–0019–0042.

[43] FRA–2022–0019–0008.

[44] FRA–2022–0019–0043.

FRA's Response

This final rule is designed to take a proactive approach to minimize (and hopefully eliminate) job hopping among dispatchers. While FRA does not have data showing the frequency of job hopping among dispatchers, it is known throughout the industry that it does occur. AAR and ASLRRA suggest dispatchers are disincentivized to change jobs because it would require them to gain expertise on a new territory. However, FRA is not concerned about dispatchers who voluntarily change jobs; rather this rule is intended to curtail job hopping when a dispatcher loses their job with one railroad due to a substance abuse problem or a rules violation. Given the current lack of regulations requiring previous employment background checks, it is relatively easy for dispatchers to leave their current employer after committing a rules violation and find work on another railroad. Furthermore, while AAR and ASLRRA assert that railroads are well positioned to identify dispatchers with substance abuse problems, there is no guarantee that a person with a substance abuse problem will test positive during a pre-employment test. Additionally, dispatcher certification, through the safety checks required by §§ 245.113 and 245.115, will make it difficult for dispatchers who commit certain safety violations to continue performing safety-sensitive work for another railroad.

5. Comments Relating to Evidence That New Dispatcher Duties Necessitate Requiring Certification

AAR and ASLRRA are critical of FRA's assertion that dispatching has become more complex over the last five to ten years. Specifically, they allege that in making this claim, FRA cites to a report by Foster-Miller, Inc., that was written more than 17 years ago. They also assert that FRA did not provide any data or analysis to show that a dispatcher's job is made more complex by PTC.

FRA's Response

In criticizing FRA's reliance on the 2006 Foster-Miller report, AAR and ALSRRA misconstrue the NPRM. While FRA cited to the Foster-Miller report to provide an overview of some of the tasks dispatchers perform, FRA does not reference the 2006 report as support for its position that dispatching has become more complex over the past five to ten years. In fact, after the NPRM states that ''[o]ver the past 5 to 10 years, the job of a railroad dispatcher has become more complex and demanding[,]'' there is no further reference to the Foster-Miller report.[45] Instead, FRA cited to a decrease in the number of dispatchers which has caused an increase in the size of the territories dispatchers are responsible for, as support for its assertion; a point that AAR and ALSRRA do not dispute.

AAR and ASLRRA also disagree with FRA's characterization that PTC has made dispatching more complex. They argue that it has made dispatching easier because PTC serves as a back-up system to prevent human factor accidents. FRA agrees that PTC has improved railroad safety, but that does not mean it has made dispatching easier. In recent years, dispatchers have had to learn the complexities of implementing numerous new technologies that have been introduced into the industry such as PTC. Today's dispatcher is in a constant state of learning based on the rapid evolution of technologies and processes which makes the dispatcher's job more challenging even if the end result is a safer railroad network.

6. Comments Asserting That the Rule Is Duplicative of Parts 243, 270, and 271

AAR and ASLRRA contend that the gaps in FRA's regulations that this rule is trying to fill are either non-existent or immaterial. They argue that by adding these new certification requirements, FRA is harming railroad safety ''by causing confusion and diverting resources from higher priority safety risks.'' [46] They further state that there is significant overlap between this rule and part 243 and that in the NPRM, FRA incorrectly stated that part 243 does not require dispatchers to undergo a performance skill evaluation conducted by a qualified instructor. They cite to 49 CFR 243.201(c)(2) as evidence that performance skill evaluations are required under part 243 to demonstrate on-the-job training (OJT) proficiency. They also note that experienced employees are required to undergo refresher training in accordance with 49 CFR 243.201(e).

With respect to the System Safety Program (SSP)/Risk Reduction Program (RRP) requirements in 49 CFR parts 270 and 271 (parts 270 and 271), AAR and ASLRRA take the position that requiring dispatcher certification casts aside the risk analysis performed under parts 270 and 271 and could lead to railroads focusing on lower priority risks associated with dispatchers. In response to FRA's assertion that not all railroads have to comply with parts 270 and 271, they allege that the SSP/RRP requirements apply to more than 83% of the line-haul mileage and 95% of the workers in the industry, making this distinction immaterial.

FRA's Response

As an initial matter, AAR and ASLRRA's narrative that this rule is duplicative of parts 243, 270, and 271 appears to be contradicted by congressional direction. As they note in their joint comment, FRA issued the training regulations in part 243, the SSP regulations in part 270, and the RRP regulations in part 271 because of a statutory mandate in the RSIA.[47] However, in the same law, Congress explicitly permitted requiring the certification of certain crafts if the Secretary determined it was necessary to improve railroad safety.[48] Had Congress determined that certification requirements were duplicative of what was already mandated by the RSIA, it would not have required the Secretary to study whether other crafts or classes of employees could benefit from certification, or given the Secretary the statutory authority to issue additional certification regulations.

Turning to any overlap between this rule and part 243, FRA stands by its position proffered in the NPRM that this rule complements, not duplicates, part 243. FRA concedes that the NPRM statement that part 243 does not require dispatchers to undergo performance skill evaluations is incorrect. However, these skill evaluations required under part 243 only apply to newly hired employees or persons who have been assigned a new safety-related task. Part 245 builds off the initial performance skill evaluations required in part 243 by mandating that dispatchers also receive an unannounced compliance test each calendar year to ensure that dispatchers continue to safely perform their duties after their initial certification. Part 243 has no such continuing compliance testing requirement. While 49 CFR 243.205 requires employers to perform periodic oversight tests and inspections to determine whether their employees are complying with Federal railroad safety laws and regulations, the rule does not require that all employees receive such tests and inspections. In fact, under part 243, an employee could work for decades without being tested

[45] 88 FR 35574, 35576 (May 31, 2023).

[46] FRA–2022–0019–0041.

[47] Rail Safety Improvement Act of 2008, Public Law 110–432, sections 103, 109, 401(a), 122 Stat. 4848, 4853–56, 4866–67, 4883 (2008).

[48] Rail Safety Improvement Act of 2008, Public Law 110–432, section 402, 122 Stat. 4848, 4884 (2008).

or inspected. Therefore, § 245.123 fills a significant gap in FRA's training rule.

Also, as noted in the NPRM, part 243 does not require railroads to have formal processes in place for promptly removing dispatchers from service if they violate one or more basic regulatory standards that could have a significant negative impact on the safety of rail operations. AAR and ALSRRA failed to address this fact in their comment. Part 245 complements part 243 by mandating that railroads remove dispatchers from service if they commit one of the egregious safety violations enumerated in § 245.303(e). This rule also requires railroads to perform certain safety checks before certifying a person as a dispatcher. These safety checks pertain to a person's prior safety conduct, both working on railroads and as a motor vehicle operator; their history of substance abuse disorders; and their visual and hearing acuity. These are basic safety requirements that are not addressed in part 243. Thus, FRA does not find this new rule duplicative of FRA's training rule.

FRA is also unconvinced by AAR and ALSRRA's argument that this rule is duplicative of parts 270 and 271. As stated in the NPRM and as implicitly acknowledged in their joint comment, there is no guarantee in parts 270 and 271 that railroads will address risks associated with dispatching. Parts 270 and 271 permit railroads to prioritize risks,[49] thus even if a railroad identifies aspects of dispatching as a risk, the railroad may not implement any mitigation efforts to reduce that risk if it determines other risks are higher priorities. Given this possibility, it is unclear how part 245 can be viewed as duplicative of parts 270 and 271. Moreover, FRA disputes the assertion from the associations that this rule casts aside the risk analysis railroads are required to perform under the parts 270 and 271. Nothing in this rule changes a railroad's responsibilities under those rules. They can continue to perform the risk analysis and the necessary mitigations to comply with parts 270 and 271 while also implementing a dispatcher certification program.

In conclusion, FRA does not see this new rule as duplicative or a hindrance to other existing regulations. As stated in the 2015 report to Congress, the purpose of certification is to document and verify that the holder of the certificate has achieved certain training and proficiency and to create a record of safety compliance infractions that can be reviewed when hiring experienced individuals. While developing this rule, FRA has been mindful of other regulations that may touch upon topics covered in this rule, including FRA's training, qualification, and oversight regulations in part 243; SSPs and RRPs in parts 270 and 271; and fatigue risk management programs in parts 270 and 271. However, FRA finds that this rule would complement, rather than duplicate, those regulations.

D. Miscellaneous Comments

FRA received a couple of comments that raised miscellaneous issues. Some commenters felt that FRA should require that certain programs be certified either in addition to or instead of dispatchers. One commenter listed Unified Train Control System, Movement Planner, Trip Optimizer, and PTC as programs that should have to be certified.[50] Another commenter added that many of the errors that occur in the dispatching field are due to failures in technology, yet there are no requirements ''for such programs to be monitored, certified, and overseen to ensure they aren't providing inaccurate information to the train dispatcher.'' [51] FRA appreciates these comments and acknowledges that this is an issue that may warrant consideration by FRA in the future. However, requiring that certain programs be certified is beyond the scope of this rulemaking.

One individual suggested that screening dispatchers for diabetes had merit, but they also expressed concern that dispatchers would be held out of service for failing a physical.[52] This commenter did not elaborate on why dispatchers should be screened for diabetes. Since FRA is unaware of any reason why a person's diabetes diagnosis would affect their ability to safely perform the job of a dispatcher, FRA sees no reason to add such a requirement to this rule.

IV. Section-by-Section Analysis

This section responds to public comments and identifies any changes made from the provisions as proposed in the NPRM. Provisions that received no comment, and are otherwise being finalized as proposed, are not discussed again here.

Section 245.3 Application and Responsibility for Compliance

This section specifies that this rule applies to all railroads except for those railroads described in paragraph (a). Paragraph (a)(1) of this section exempts those railroads that do not have any dispatch tasks from the requirements of this part. FRA revised this paragraph from what appeared in the NPRM to clarify that ''dispatch'' is the term defined in § 245.7, not ''dispatch tasks.''

Section 245.5 Effect and Construction

This section addresses several legal issues including that FRA does not intend to alter the terms, conditions, or interpretations of existing collective bargaining agreements that use job classification titles other than dispatcher for a person who dispatches a train. AAR and ASLRRA allege that FRA fails to understand that this new rule will require the altering of collective bargaining agreements to satisfy the requirements of this new rule. Based on this comment, it appears the associations are misconstruing paragraph (a) in this section. Paragraph (a) does not state that collective bargaining agreements will not have to be altered as a result of this new rule. To the contrary, FRA understands that, due to the new requirements in this rule, collective bargaining agreements may need to be modified. Paragraph (a) simply states that the rule does not affect the use of job classification titles other than dispatcher in collective bargaining agreements for persons who dispatch trains.

Section 245.7 Definitions

This section defines a number of terms that have specific meaning in this part. As an initial matter, FRA has removed the definition of ''controlled track'' from this section as that term does not appear in the final rule.

FRA received a number of comments regarding its proposed definition of ''dispatch.'' TTD, ATDA, and IBEW all requested that FRA provide more specificity to the definition. In particular, all three labor organizations appeared to support ATDA's suggestion that paragraph (1)(iii) of this definition be revised to ''[i]ssuing a mandatory directive, including, but not limited to, speed restrictions, highway-rail grade crossing protections, or those which establish working limits for roadway workers.'' [53] FRA agrees with the labor organizations that this proposed revision is an improvement on the NPRM definition, as it more accurately reflects what FRA is trying to convey. FRA therefore adopts this change in the final rule.

AAR and ASLRRA submitted a comment requesting that FRA clarify that the definition of ''dispatch'' only applies to persons covered by the

[49] *See e.g.,* 49 CFR 270.5 (definition of ''risk-based hazard management'') and 271.103(b)(3).

[50] FRA–2022–0019–0010.

[51] FRA–2022–0019–0015.

[52] FRA–2022–0019–0020.

[53] FRA–2022–0019–0038.

definition of ''dispatching service employee'' found in 49 U.S.C. 21101(2), and it does not apply to persons performing *de minimis* dispatching functions. In particular, AAR and ASLRRA wanted to ensure the definition did not apply to positions such as bridge tenders, tower operators, control operators, and yardmasters who have traditionally not been treated as dispatchers, but who sometimes perform *de minimis* dispatching functions. They also expressed concern that FRA was attempting to include certain roadway workers in the definition of ''dispatch'' without a valid safety justification. They contend that expanding the definition would require railroads to alter their collective bargaining agreements and ''would create an expensive, unworkable administrative mess.'' [54] Lastly, AAR and ASLRRA discussed back-office employees who manage and analyze data that is used by dispatchers. They stated that there was no basis for FRA to expand the definition of ''dispatch'' to these employees. An individual commenter also sought clarification from FRA on what type of work would require certification under this rule. Specifically, would the definition of ''dispatch'' apply to ''Terminal/Supervisors'' and trainmasters.[55] Another commenter asked whether it was a person's job title that determined whether they had to be certified or did it depend on the territory they worked on.[56]

As a general rule, FRA did not intend for this rule to apply to yardmasters, bridge tenders, tower operators, control operators, terminal supervisors, trainmasters, roadway workers, or back-office employees. FRA believes the vast majority of workers with these titles will be excluded from the definition of ''dispatch'' as it appears in this final rule. As the commenters expressed, these workers typically would not be encompassed in the definition of ''dispatch'' because either: (1) they do not meet the definition of a ''dispatching service employee'' as defined by 49 U.S.C. 21101(2); or (2) paragraph (2) of this definition applies to the work they perform. Paragraph (2) of this definition excludes from the definition of ''dispatch'' actions of personnel in the field: (i) effecting implementation of a written or verbal authority or permission for a railroad operation, including an authority for working limits granted to a roadway worker; [57] (ii) operating a function of a signal system designed for use by those personnel; or (iii) sorting and grouping rail cars inside a railroad yard to assemble or disassemble a train.

While most workers with the job titles listed above will be excluded from this rule under paragraph (2) or because they do not meet the definition of ''dispatching service employee'' in 49 U.S.C. 21101(2), a person's job title is irrelevant to the determination of whether they must be certified under this rule. Instead, it is the work function being performed that determines whether an individual must be certified. For example, a person could have the job title of ''yardmaster'' but if they perform functions that meet the definition of ''dispatch'' in this section, they would have to be certified despite their job title.

The American Association of Nurse Practitioners (AANP) submitted a comment on the definition of ''medical examiner'' in the proposed rule. Noting that approximately 70% of all nurse practitioner graduates deliver primary care, AANP requested that FRA revise the definition of ''medical examiner'' to include nurse practitioners and thereby authorize them to make determinations in accordance with this rule. AANP asserted that the definition of ''medical examiner'' in the proposed rule was based on FRA's locomotive engineer certification regulations in 49 CFR part 240, which are now 32 years old and not reflective of the current practice environment where nurse practitioners provide a substantial portion of care. While FRA has not revised the definition of ''medical examiner'' to specifically include nurse practitioners, FRA clarifies that if a nurse practitioner is a licensed or certified technician, FRA's regulations in 49 CFR parts 240 and 242 (and this final rule) allow the nurse practitioner to perform the vision and hearing examinations required in those parts (and in this rule). However, given the complex nature of this issue and FRA's lack of regulatory requirements for medical examiners, the question of whether nurse practitioners should be allowed to serve as medical examiners (and if so, whether they should be required to comply with specific regulatory or industry standards) is best addressed in a future rulemaking during which comments can be solicited specifically on this issue. Accordingly, only a doctor of medicine or doctor of osteopathy is authorized by this final rule to conduct a medical evaluation to determine whether a person can safely work as a certified dispatcher if the person fails the visual or hearing acuity examination. FRA did revise the last sentence of this definition changing ''employee'' to ''individual'' since not all persons examined by a railroad medical examiner will be railroad employees.

FRA also received several comments on the proposed definition of ''qualified instructor.'' TTD, ATDA, and IBEW submitted similar comments addressing paragraph (4) of the proposed definition (paragraphs (2) and (3) of the definition in the final rule) which states that if a railroad has designated employee representation, a qualified instructor must either be selected in concurrence with the designated employee representative or have at least one year of experience as a certified dispatcher. The labor organizations propose to change the ''or'' in paragraph (4) to an ''and'' and that the definition require a minimum of two years experience as a certified dispatcher. Therefore, under the organizations' proposal, a qualified instructor for a railroad that had designated employee representation would have to be selected in concurrence with the designated employee representative and have at least two years service as a certified dispatcher. In support of its position, ATDA stated that requiring concurrence from a union representative would be beneficial because its ''representatives are typically working train dispatchers themselves, making them some of the best individuals suited to determine a train dispatcher's proficiency and have a vested interest in ensuring that candidates receive the best training and instruction possible.'' [58] The unions also agreed that one year of dispatching experience was insufficient for someone to be a qualified instructor, and pointed to the fact that many railroads do not consider a dispatcher to be fully proficient until they have five years of experience. TTD alleged that some Class I railroads are having newly certified conductors train conductor candidates, and this is creating dangerous conditions that this rule should aim to avoid with respect to dispatchers by requiring two years of dispatching experience.

In contrast, APTA submitted a comment requesting that paragraph (4) of this definition be deleted altogether. APTA contends selecting a qualified instructor is inherently the responsibility of the railroad and should not be subject to another party's

[54] FRA–2022–0019–0041.

[55] FRA–2022–0019–0023.

[56] FRA–2022–0019–0012.

[57] In this final rule, FRA revised paragraph (2)(i) of this definition to remove a redundancy that appeared in the NPRM, but the substance of the definition is unchanged.

[58] FRA–2022–0019–0038.

consent. Alternatively, APTA suggests a railroad could list its minimum standards to become a qualified instructor in its certification program.

After review of these comments, FRA has decided not to adopt these proposals. FRA disagrees with APTA that railroads with designated employee representation should not have to obtain concurrence from labor. The required concurrence of the designated employee representative has been retained to facilitate input by labor, specifically in situations involving qualified instructor candidates with minimal experience (*i.e.,* less than 12 months experience working as a dispatcher).

While FRA agrees with the labor organizations that it would be beneficial for qualified instructors to have more than one year of dispatching experience and FRA encourages railroads to select qualified instructors with more than one year of dispatching experience, FRA is concerned that requiring two years of experience would be too burdensome for some railroads especially given the high turnover rate among dispatchers. Furthermore, FRA does not have sufficient support to justify imposing a two-year requirement. FRA also does not concur with requiring that all qualified instructors on railroads with designated employee representation have both concurrence from labor and at least one year of dispatcher experience. This revision would essentially give a designated employee representative veto power over any person the railroad chooses as a qualified instructor. The goal of this definition is to provide for the involvement and consultation of labor in the selection of qualified instructors while also maintaining the railroad's autonomy. The proposal by the organizations would fail to strike that balance.

Even though FRA is not instituting any of the proposed changes to this definition suggested by APTA and the labor organizations, it is revising the definition that was in the proposed rule. The definition in the NPRM had some redundancies, and after careful consideration, FRA has decided to change the format of this definition so that it mirrors the definition of qualified instructor in part 242. FRA has determined that this version of the definition is more comprehensible and it clarifies that when a railroad has designated employee representation, the railroad must first attempt to obtain labor's concurrence of the railroad's selection of a qualified instructor. Only if the railroad is unable to obtain labor's concurrence, may it move to paragraph (3) of the definition and select a person, without such concurrence, who has at least one year of service working as a dispatcher.

Section 245.11 Penalties and Consequences for Noncompliance

This section acknowledges FRA's authority to issue civil penalties for any violations of this part. IBEW expressed its support for the proposed language in this section and its agreement that individuals should only receive penalties for willful violations.

Section 245.103 FRA Review of Certification Programs

This section covers FRA's process for reviewing and approving certification programs. ATDA and TTD submitted comments contending that paragraph (a) of this section should be revised so that Class II railroads must submit their certification programs to FRA within eight months of the effective date of the final rule instead of 16 months as stated in the NPRM. These labor organizations contend that Class II railroads have sufficient resources to complete their programs within this reduced timeframe, and that the 16-month timeframe is excessive and would delay the implementation of this important safety requirement. IBEW submitted a similar comment stating that those Class II railroads who have the resources to complete their programs within eight months should do so to avoid unnecessary delays in implementing this rule.

Despite these comments, FRA has decided not to make any changes to the program submission schedule from the proposed rule. In the 240 days between the deadlines referenced in paragraphs (a)(1) and (2) of this section, FRA will be devoting its resources to reviewing approximately 41 certification programs from Class I and commuter railroads [59] and is unlikely to have the capacity to begin its review of Class II programs until after the date referenced in paragraph (a)(2). Also, FRA is concerned that the eight-month deadline proposed by the labor organizations may put too much of a strain on some Class II railroads. Thus, while FRA shares the organizations' desire for a speedy implementation of this rule, FRA does not believe that giving Class II railroads this additional time to submit their certification programs will delay implementation.

Paragraph (b) of this section states that railroads that begin dispatching operations after this rule goes into effect, cannot commence such dispatching operations until FRA has reviewed and approved the railroad's certification program. FRA made some minor revisions to this paragraph from the proposed rule to make it clearer, but these changes did not affect the substance of the paragraph. Paragraph (c) of this section provides the method railroads must use to submit their certification programs to FRA. In the NPRM, this paragraph stated that dispatcher certification programs should be uploaded to a secure document submission site. However, after further consideration, FRA determined it would be easier for both railroads and the agency if programs were submitted by email. Paragraph (c) has been revised accordingly in this final rule.

With respect to paragraph (d) of this section, which requires railroads to notify certain parties when it submits its certification program to FRA, AAR and ASLRRA commented that railroads should not have to have their certification programs approved by the labor union president and all of the railroad's dispatcher employees. AAR and ASLRRA claim such a requirement would be a substantial change from what is required in the locomotive engineer and conductor certification rules and is arbitrary and capricious. Specifically, they are concerned that a labor union president could hold up their approval causing the railroad to miss the deadline for submitting the certification program to FRA.

AAR's and ASLRRA's concern with respect to paragraph (d) of this section is unwarranted as this rule does not require railroads to obtain approval of their programs from labor union presidents or their dispatching employees. This rule only provides these individuals with the opportunity to review and comment on these programs. FRA believes the source of AAR and ASLRRA's confusion is the reference to a ''request for approval'' in paragraph (d)(1). However, this document, which is described in greater detail in § 245.107(a), is a request for approval from FRA, not from a labor union president or dispatching employee. In an effort to avoid further confusion, FRA is adding a reference to § 245.107(a) in paragraph (d)(1).

Several labor organizations, including ATDA, IBEW, and TTD, expressed concerns about the comment period in paragraph (e) only being 45 days. They are particularly concerned about the initial influx of programs they will have to review after this rule first goes into effect, and that 45 days will not be enough time to review these programs and provide comments. Therefore, the unions are requesting that the comment

[59] Federal Railroad Administration, ''Certification of Dispatchers Final Rule Regulatory Impact Analysis.''

period be extended to 90 days. TTD also noted that unions would likely receive these certification programs shortly after they receive Positive Train Control Safety Plan Requests for Information to review. This would put a strain on their resources and rushed feedback from stakeholders will not be as beneficial to FRA.

Based on these comments from the labor organizations, FRA has extended the comment period from 45 days to 60 days. This change will provide commenters with additional time to draft and submit meaningful comments that will assist FRA in its review of these programs. However, in an effort to avoid further delays to the implementation of this rule, FRA is declining to extend the comment period to 90 days. FRA understands that labor organizations are particularly concerned about the initial influx of programs they will need to review when this rule first goes into effect, but once the effective date of this rule is established, the unions will have several months to plan how to efficiently allocate their resources during the timeframes when they can expect to receive a large number of programs to review. Also, FRA will consider late-filed comments to the extent practicable and will extend comment periods on a case-by-case basis if circumstances warrant (especially during these initial periods where there is a high volume of programs to review).

AAR and ASLRRA are also opposed to the FRA review and approval process that is described in paragraph (f). Specifically, they contend that the proposed process allows for FRA ''to arbitrarily hold railroads in limbo for an indefinite time period even if their programs are fully compliant'' [60] and does nothing to ensure that FRA's review process is handled expeditiously. Instead, AAR and ASLRRA contend that FRA should implement the same review and approval process found in parts 240 and 242 where a certification program or material modification is considered approved 30 days after it is submitted unless FRA notifies the railroad in writing that its program has been disapproved.

FRA is declining to adopt this suggestion as it is untenable following a 2020 decision from the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In *Brotherhood of Locomotive Engineers and Trainmen* v. *Federal Railroad Administration,* the D.C. Circuit invalidated FRA's passive approval of a modification to Kansas City Southern Railway's locomotive engineer certification program. In its decision, the court noted that the Administrative Procedure Act ''requires agencies to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach.'' [61] The court found FRA's passive approval system allowed for a ''complete absence of any accompanying explanation for the agency's approval'' of the certification program.[62] Since the administrative record did not contain any explanation or reasoning for the determinations made by FRA in approving the program, the court vacated and remanded the case for FRA to provide a more complete explanation of the agency's action or to take new agency action altogether.[63]

Given the D.C. Circuit's criticism of the passive approval system in part 240, FRA will not include a similar system in this rule. Therefore, paragraph (f) of this section creates a new system where a program is not considered approved by FRA until the agency issues an approval letter to the railroad. Contrary to AAR and ASLRRA's comment, FRA will not arbitrarily hold railroads in limbo for an indefinite period of time. FRA will make every effort to meet its goal of issuing a decision on a program within 120 days of submission. This goal was 90 days in the NPRM but because FRA extended the comment period in paragraph (e) of this section, it felt that 120 days was a more realistic goal to complete its review of these programs. However, FRA acknowledges that meeting this goal will not always be feasible and will be especially difficult during the initial implementation of this rule when FRA receives several programs to review at the same time. During this time, railroads will be able to continue to operate as they did prior to this rule going into effect so it is unclear how railroads will be harmed by such delays.

AAR and ASLRRA also commented that FRA should provide more clarity to its definition of ''material modification'' found in paragraph (g)(1) as they allege the vagueness of the proposed definition could result in stifling innovations in safety systems. In particular, they want FRA to ''allow railroads to use different delivery methods and to incorporate new technology without treating those changes as material modifications. Likewise, they state that FRA should limit material modifications to significant content-based changes that are likely to impact safety and not treat edits to test questions, structure, and timelines as material modifications.'' [64]

FRA disagrees with the AAR and ASLRRA suggestion to limit what is considered a material modification under this rule. The term ''material modification'' is specifically triggered when there is a change in an approved certification program that significantly affects the certification process. This can include alterations in the training curriculum, modifications to the testing or assessment methods, changes to the duration of the program or program components such as training, changes in the number of test questions or the scoring system, or any other changes that would substantially impact the way dispatchers are trained, evaluated, and certified. It is vital that FRA have the opportunity to review these proposed changes to a certification program to ensure they align with the overall goals of maintaining safety and compliance.

AAR's and ASLRRA's desire to not include the incorporation of new technologies as material modifications is unworkable. There are significant safety concerns at play when incorporating new technologies, and if these new technologies do not receive the proper level of regulatory oversight, that could lead to safety risks being introduced into the system which could undermine public confidence in railroad safety. New technologies also have the potential to affect working conditions and the environment which is why it is vital that stakeholders are engaged in the process of modifying a certification program based on new technologies as is provided for in paragraph (e) of this section. Therefore, FRA determined it would be inappropriate to allow railroads to introduce new technologies into their previously approved certification programs without considering them to be material modifications to such programs.

NRC commented that there should be a standard process for submitting material modifications where railroads explain the reason for the modification and discuss the dynamic risk assessments, training impact, desired outcomes, and mitigations resulting from the modification. Railroads are welcome to include this information in their request for approval (described in § 245.107(a)(3)), but it is not required. FRA is concerned that NRC's proposal would be unduly burdensome and

[60] FRA-2022-0019-0041.

[61] *Brotherhood of Locomotive Engineers & Trainmen* v. *Fed. R.R. Admin.,* 972 F.3d 82, 115 (D.C. Cir. 2020).

[62] *Brotherhood of Locomotive Engineers & Trainmen,* 972 F.3d at 116–17.

[63] *Brotherhood of Locomotive Engineers & Trainmen,* 972 F.3d at 117.

[64] FRA-2022-0019-0041.

could stifle innovation and hinder a railroad's freedom to make business decisions that are in its best interest by creating a new requirement that the railroad justify its decision to modify its program. While railroads are encouraged to make modifications to their programs that will optimize railroad safety, ultimately the only requirement for a modification is that it complies with part 245. FRA is, however, amending paragraph (g) of this section to include a reference to the request for approval discussed in § 245.107(a)(3).

Lastly, TTD expressed its support for paragraph (h)(3) of this section, which requires that railroads with current dispatching operations, as of the effective date of this final rule, resubmit their certification program within 30 days of being notified by FRA that their program has been disapproved. TTD cited to instances of railroads not bringing their certification programs into compliance with parts 240 and 242, and specifically referenced recent accidents involving NS as support for their position. TTD recommended that FRA ''amend this section to propose fines for railroads that repeatedly are not compliant with the certification requirements'' [65] in this rule. FRA appreciates TTD's comment; however, such an amendment is unnecessary as § 245.11 already provides for FRA to issue civil penalties for violations of this part. FRA will publish a civil penalty schedule for this part on its website. FRA is revising paragraph (h)(3)(iii) of this section to refer to ''paragraph (g)(4) of this section'' as the proposed rule incorrectly referenced paragraph (g)(3) instead.

Section 245.105 Implementation Schedule for Certification Programs

This section contains the timetable for the implementation of this final rule. APTA submitted a comment that railroads should be allowed to designate those individuals who are in an initial training program when this rule goes into effect so that they can become certified dispatchers upon completion of the training program, pursuant to paragraph (c)(1) of this section. APTA contends that implementing certification requirements in the middle of a training program would be disruptive to the participants and instructors.

In response to APTA's comment, paragraph (d) of this section allows railroads to continue to designate as certified dispatchers, those individuals who have been authorized by the railroad to perform the duties of a dispatcher, until the date that FRA approves the railroad's certification program. Therefore, all railroads will be able to continue to designate individuals as certified dispatchers for several months after the effective date of this rule which should include any person who is in a dispatcher training program on the effective date of this rule. Railroads will no longer be able to designate persons as certified dispatchers under paragraph (d) once FRA approves the railroad's program. FRA understands that some individuals will likely be in the middle of a training program when this occurs, but railroads will have several months to prepare for this occurrence and to figure out the best way to minimize any disruption.

FRA is revising paragraph (d) from the proposed rule to clarify that railroads are only allowed to ''designate'' persons as certified dispatchers in accordance with paragraph (d) between March 17, 2025 and the date FRA approves the railroad's certification program. Once FRA approves a railroad's certification program, the designation system described in paragraph (d) is terminated, and a person must go through the full certification process described in subpart B of this rule. Paragraph (d)(1) has also been revised from the proposed rule because the NPRM stated that paragraph (d) applied to persons authorized by a railroad to perform the duties of a dispatcher between the effective date of the final rule and the date FRA approves the railroad's certification program. However, paragraph (d) only applies to persons authorized by a railroad to perform the duties of a dispatcher between March 17, 2025 and the date FRA approves the railroad's certification program.[66]

NRC's comment on paragraph (f) of this section is that all dispatchers should be certified within 6 to 12 months after FRA approves a railroad's program. FRA interprets this comment to mean that NRC thinks an individual should have to get recertified in accordance with the requirements of subpart B of part 245 within 6 to 12 months after FRA approves the railroad's program. FRA is electing not to adopt this suggestion as it thinks NRC's proposal would place too great a burden on large railroads in particular and may not be administratively feasible. As was stated in the NPRM, FRA sees a benefit to railroads (especially large railroads) spacing out the recertification process for its dispatchers so they recertify approximately one-third of their dispatchers each year.[67] This suggested approach would not be allowed under NRC's proposal as all dispatchers would have to be recertified within that first year after FRA approves the railroad's program. This would create a cycle where every three years, the majority of the railroad's dispatchers would be due for recertification and the railroad would have to complete the recertification process in a short period of time. Such a system would likely have a deleterious effect on the quality of the recertification process and thus, would be harmful to railroad safety.

Finally, AAR and ASLRRA think FRA should eliminate paragraphs (f)(1) through (3) which allow dispatchers who are approaching retirement age to submit a request to their railroad that they not be recertified, in accordance with subpart B of part 245, until three years from the date the railroad's program is approved by FRA. They contend this provision is contrary to FRA's safety rationale for this rule and would allow a dispatcher to forego the full certification process for up to six years. They also argue this would be more burdensome on the railroads as they would have to keep track of a special category of employees and establish special protocols for them.

FRA is choosing to keep paragraphs (f)(1) through (3) in this final rule. These paragraphs simply allow dispatchers who meet the requirements of paragraph (f)(1) to make a request that the railroad not make them go through the full recertification process until their initial certification expires (three years after FRA approves the railroad's certification program). FRA included these paragraphs under the assumption that it would not be an efficient use of a railroad's resources to perform the full recertification process on a designated dispatcher who is going to retire before the end of their designation period. However, if, as AAR and ASLRRA suggest, a railroad finds that it would be more burdensome to keep track of this special category of employees, the railroad may deny these requests. The only obligation these paragraphs put on a railroad to grant these requests is found in paragraph (f)(2) which states that *if* a railroad grants any such request, it must grant all other requests ''to every extent possible.'' In addition, this paragraph does not create a loophole where a dispatcher could go six years without having to go through the full recertification process. Paragraph (f)

[65] FRA–2022–0019–0037.

[66] Paragraph (c) of this section applies to all persons who have been authorized to perform dispatcher duties on or before March 17, 2025.

[67] *See* 88 FR 35574, 35585 (May 31, 2023).

plainly states, with no exceptions, that no person shall be allowed to serve as a dispatcher more than three years after their railroad's program is approved without going through the full recertification process described in subpart B of part 245. Nothing in paragraphs (f)(1) through (3) contradicts this language in paragraph (f).

Section 245.107 Requirements for Certification Programs

This section provides the organizational requirements and a narrative description of what must be included in a railroad's certification program. After further review of the proposed rule, FRA determined more guidance was needed on material modifications to a previously approved program and on the request for approval that must accompany a railroad's submission to FRA. In paragraph (a)(1) in this final rule, FRA clarified that when a railroad submits a material modification to its program, it must provide FRA with a copy of the complete certification program with all the material modifications incorporated. This will assist FRA's review in determining whether the program as a whole (with the incorporated material modifications) satisfies the requirements of this part. In paragraph (a)(2), FRA added language stating that a railroad's request for approval of an initial program submission shall include a statement that the railroad is seeking approval of its program. FRA also added a paragraph describing what a railroad must include in its request for approval when making a material modification. Paragraph (a)(3) in the final rule states that such request for approval must include an explanation of all the material modifications the railroad wants to make to its program. This requirement will ease FRA's burden in identifying the changes the railroad is making to its previously approved program.

With respect to paragraph (b)(2)(ii), FRA mistakenly referred to § 245.119(g) in the NPRM. For the final rule, FRA has changed this reference to § 245.119(i) which contains the continuing education requirements for a training program. Lastly, FRA moved what was § 245.125(b) in the NPRM into this section by adding paragraphs (b)(2)(vi) and (b)(4)(iv). Paragraph (b)(2)(vi) of this section states that Section 2 of a railroad's program shall address how it will administer the training of previously certified dispatchers who have had their certification expire. Paragraph (b)(4)(iv) of this section states that Section 4 of the program must address how the railroad will administer the training of previously uncertified persons with extensive dispatching experience. If Sections 2 and 4 of a program do not address these issues, such persons will be required to undergo the railroad's entire training program.

Section 245.111 Prior Safety Conduct as Motor Vehicle Operator

This section contains the requirements and procedures that railroads are required to follow when evaluating the motor vehicle records of a candidate for dispatcher certification or recertification. TTD, ATDA, and IBEW submitted comments on this section expressing concern that a 60-day time period may not allow enough time to request and obtain driving records as part of the recertification process, due to administrative delays outside the recertification candidate's control. However, paragraph (c) requires candidates for dispatcher recertification to request their driving records at least 60 days prior to the date on which their certification expires. Therefore, at least 120 days will elapse between the date on which candidates for recertification requests their driving records and the end of the 60-day ''grace period'' authorized by paragraph (c). However, if a candidate for certification or recertification is unable to obtain their driving records, despite the grace period provided in paragraphs (b) and (c), paragraph (e) authorizes either the railroad or the candidate to submit a waiver petition for regulatory relief.

FRA also received comments from IBEW and NRC expressing concern that requiring railroads to include a review of driving records in their certification programs may inadvertently result in barring candidates who have unsatisfactory driving records from obtaining dispatcher certification and recertification. An individual commenter added that reviewing driving records to discover substance abuse issues is warranted but railroads should not review such records for speeding violations.[68]

The intent of this section is to obtain and review motor vehicle records to identify candidates for dispatcher certification and recertification who may have an active substance abuse disorder so they can be referred for evaluation and any necessary treatment before they are allowed to perform safety sensitive service. As explained in paragraph (m) of this section, the only motor vehicle incidents railroads may consider are related to being under the influence of, or impaired by, alcohol or a controlled substance. Railroads may not consider a person's speeding violations or other aspects of their motor vehicle driving record that are not related to alcohol or drug use when making a determination on dispatcher certification.

In the NPRM, paragraph (h)(2) of this section required all persons seeking certification or recertification to request driving records from the chief of the driver licensing agency of any jurisdiction, including states or foreign countries, that issued or reissued that person a driver's license in the past five years. This paragraph mirrored 49 CFR 240.111(c)(2).[69] However, FRA determined that a five-year lookback period was unnecessary in this final rule since paragraph (l)(2) of this section only allows railroads to consider motor vehicle driving incidents that occurred within the three years prior to the date of the railroad's certification decision. Thus, FRA changed the lookback period to three years. Furthermore, rather than focusing on when a jurisdiction *issued or reissued* a driver's license, FRA thought the more appropriate inquiry was whether a person *held* a driver's license from a jurisdiction within the previous three years. This paragraph has been revised in accordance with these changes.

Paragraph (k) of this section requires certified dispatchers and candidates seeking dispatcher certification to notify their certifying railroad[70] of any drug or alcohol related motor vehicle incidents described in paragraph (m) of this section within 48 hours of conviction or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance or refusal to undergo such testing. Paragraph (k) also provides that, for purposes of dispatcher certification, a railroad cannot have a more restrictive company rule requiring a dispatcher to report a conviction or completed state action to cancel, revoke, or deny a motor vehicle driver's license in less than 48 hours.

[68] FRA–2022–0019–0020.

[69] The Rail Safety Improvement Act of 1988 required the five-year lookback period for persons seeking locomotive engineer certification. Public Law 100–342, 4, 102 Stat. 624, 625 (1988). However, no such requirement applies to this rule.

[70] In the NPRM, paragraph (k) of this section said certified dispatchers and candidates seeking certification must notify their ''employing railroad'' of any motor vehicle incident described in paragraph (m) of this section. However, because not all dispatchers are employed by a railroad, FRA is revising paragraph (k) in this final rule so that such incidents must be reported to the ''certifying railroad.''

AAR and ASLRRA criticized this provision for precluding railroads from having more restrictive company rules requiring dispatchers to report a conviction or completed State action to cancel, revoke, or deny a motor vehicle driver's license in less than 48 hours. AAR and ASLRRA asserted that, as a practical matter, railroads should be able to request notification in less than 48 hours as a matter of company policy if they determine notification is in the safety interest of the railroad. The associations further asserted that they could easily envision a scenario where safety would be decreased because a person takes advantage of the 48-hour grace period after being convicted to delay notification. After considering these concerns from AAR and ASLRRA, FRA is declining to adopt this requested change. By keeping this requirement in paragraph (k), a railroad cannot revoke, deny, or otherwise make a person ineligible for certification until that person has received due process from the state agency taking the action against their motor vehicle license. This aligns with a central tenet of the U.S. judicial system that a person is considered innocent until proven guilty. Furthermore, this restriction only applies to actions taken against a person's certificate and has no effect on a person's right to be employed by a railroad. Also, by keeping this language, this paragraph maintains its consistency with 49 CFR 240.111(h) and 242.111(l).[71]

Paragraph (l) of this section prohibits railroads from considering motor vehicle driving incidents that occurred prior to the effective date of this rule or more than three years before the date of the railroad's certification decision. AAR and ASLRRA commented that there is no safety reason for these restrictions as they make it difficult to establish a pattern of safety abuses. However, the three-year limit on motor vehicle driving records that can be reviewed for purposes of this rule is based on practical considerations. The three-year limit in paragraph (l) is intended to be consistent with minimum record retention practices of state driver licensing agencies. The three-year limit is also consistent with 49 CFR parts 240 and 242.

With respect to FRA's decision not to allow railroads to consider safety conduct that occurred prior to the effective date of this rule, FRA is guided both by fairness and by the law. While retroactive effects are not completely prohibited by the Administrative Procedure Act, the U.S. Supreme Court has stated that ''[r]etroactivity is not favored in the law.'' [72] Moreover, even if there were a substantial justification for the retroactive application of a rulemaking, ''courts should be reluctant to find such authority absent an express statutory grant.'' [73] Given that there is no such express statutory grant of authority for this rule to have retroactive effects, FRA has decided not to allow railroads to consider safety conduct that occurred prior to the effective date of this rule.

Section 245.115 Substance Abuse Disorders and Alcohol Drug Rules Compliance

This section addresses active substance abuse disorders and specific alcohol/drug regulatory violations. FRA is making a minor revision to paragraph (f) of this section from what appeared in the proposed rule. FRA is removing the reference to 49 CFR 219.1003(j) because that provision only applies to locomotive engineers and conductors.

Section 245.117 Visual Acuity

This section contains the requirements for visual acuity testing that a railroad must incorporate into its dispatcher certification program. As an initial matter, in the NPRM, FRA used the terms ''visual acuity'' and ''vision acuity.'' In the interest of consistency, FRA is using the term ''visual acuity'' throughout this final rule including changing the name of this section's title to ''visual acuity.'' [74]

FRA solicited comments in the NPRM on whether visual acuity standards are necessary for dispatchers and if so, whether they should be as stringent as the existing standards for locomotive engineers and conductors. FRA received comments in support and opposition to the proposed rule's visual acuity standards. Some commenters also suggested revisions to the proposed standards.

NRC supported this section and contended that vision is critical to a dispatcher's job performance. In contrast, an individual commenter opposed this section, stating that over the course of his railroad career, he was not aware of any accident being caused by poor vision. APTA, ATDA, and IBEW also recommended removing the visual acuity requirements from this rule. These commenters felt that visual acuity requirements are unnecessary based on a dispatcher's job duties and the office setting they work in, where they primarily interact with computer screens, books, and other written materials.

Specifically, APTA argued that the distance and color vision tests described in paragraphs (c)(1) and (3) of this section are unnecessary and that the ''[a]llowance provided by the proposed [§] 245.117(d)(3) should be maintained if dispatchers are able to reliably distinguish the different indications presented on the computer-aided dispatch system or other control systems used by their railroad.'' [75] APTA also noted that dispatchers who are nearsighted, but not farsighted, may prefer not to use their corrective lenses when they are reading a computer screen or written materials up close. However, such action would render them non-compliant with paragraph (f) of this section. Thus, APTA is suggested that paragraph (f) be revised, so that dispatchers are only required to have their corrective lenses available, instead of in use, while on duty.

In its opposition to this section, IBEW noted that vision impairment can be corrected with corrective lenses or by adjusting computer monitors. IBEW also expressed concern that this section gives too much discretion to railroad medical examiners.

ATDA suggested that if FRA does not remove this requirement altogether, it should revise paragraph (c)(1) ''to measure intermediate vision acuity—measured at approximately 24 to 40 inches, or the typical distance between a user and a computer monitor—of 20/40 in at least one eye, with or without corrective lenses.'' [76] TTD agreed with ATDA's suggestion that visual acuity be measured at a distance of 24 to 40 inches, to ensure that no person is excluded by ''a vision requirement that is not necessary to perform the associated job duties.'' [77]

AAR and ASLRRA did not state any opposition to FRA's inclusion of visual acuity requirements in this rule, but they criticized FRA's use of the same visual acuity standards found in parts 240 and 242. They noted that dispatchers have different responsibilities, perform different tasks, and work in a different environment than engineers and conductors. Thus, FRA should not ''pluck'' the visual acuity requirements from parts 240 and

[71] This issue was also addressed and discussed 25 years ago when FRA was amending its locomotive engineer certification rule. *See* 63 FR 50626, 50639 (Sept. 22, 1998).

[72] *Bowen* v. *Georgetown University Hosp.,* 488 U.S. 204, 208 (1988).

[73] *Bowen,* 488 U.S. at 208–09.

[74] ''Visual acuity'' appears to be the term used in the medical field. *See* Visual Acuity, American Optometric Association, found at *https://www.aoa.org/healthy-eyes/vision-and-vision-correction/visual-acuity?sso=y.*

[75] FRA–2022–0019–0036.

[76] FRA–2022–0019–0038.

[77] FRA–2022–0019–0037.

242 and place them into this rule. Instead, ''FRA needs to analyze the components of a dispatcher's duties,'' address how visual acuity impacts a dispatcher's ability to safely perform their job, and then specifically tailor the vision requirements in part 245 to the work performed by dispatchers.[78]

The Southeastern Pennsylvania Transportation Authority (SEPTA) agreed with AAR and ASLRRA that the visual acuity requirements in this rule should not be identical to the standards in parts 240 and 242, due to the nature of a dispatcher's work being different than that of an operating crew member. In particular, SEPTA noted that vision issues due to digital eye strain or prolonged computer use are more relevant to determining whether a person can perform the job of a dispatcher than distance vision.

In response to these comments, FRA closely reviewed the tasks performed by dispatchers and determined that a dispatcher's visual acuity is a critical component of a dispatcher's roles and responsibilities. In recent years, CAD systems have evolved significantly, and are heavily reliant on visual cues and prompts presented to the dispatcher requiring acknowledgement or action.

Historically, dispatchers utilized manual techniques such as paper train sheets with handwritten entries, time, distance, and communications to determine the status of and monitor trains, equipment, and employees in their purview. Dispatchers were required to interpret timetables, manuals, railroad standards, and basic track circuitry in their centers with minimal color variations on the older boards. Current systems provide visual alarms, electronic logging and status updates of equipment, track, and safety appliances. The visual references range from computer text in pop-ups to a plethora of color indications with sometimes minute variations and visual cues requiring immediate action or acknowledgement. Therefore, it is critical that today's dispatchers meet certain visual acuity standards and can distinguish between any variation of colors and text prompts presented.

After closely reviewing the safety-sensitive tasks performed by dispatchers, FRA has decided to retain the visual acuity standards proposed in the NPRM. Such visual acuity standards are consistent with requirements for other modal professionals throughout the transportation industry. In fact, air traffic controllers, who perform a similar function in the air travel industry that train dispatchers perform in the railroad industry, have even more strict visual acuity requirements than are included in this rule.[79]

With respect to APTA's concern that dispatchers who are nearsighted may prefer not to wear corrective lenses while reading written materials or a computer screen up close but would be prevented from doing so under paragraph (f), this concern is misplaced, as dispatchers in such a scenario have an available remedy. These dispatchers can seek an opinion from the railroad's medical examiner, as provided for by paragraph (f), stating they can safely perform the work of a dispatcher without corrective lenses.

FRA disagrees with IBEW's comment that this section provides too much discretion to railroad medical examiners. First, since whether an individual has the proper visual acuity to safely perform as a dispatcher is a medical determination, it is appropriate for the decision to be made by a medical professional. Second, a medical examiner only exercises discretion if a person does not satisfy the objective vision criteria in paragraph (c) of this section. Finally, railroad medical examiners have been handling these issues for over 30 years for locomotive engineer certification and for over 10 years for conductor certification. To date, FRA is unaware of any significant problems involving their exercise of this discretion.

Section 245.118 Hearing Acuity

FRA received two comments in support of the hearing acuity requirements in the proposed rule, two comments opposing these requirements, and one comment suggesting the hearing acuity requirements should be revised. SEPTA and NRC both voiced their support for this section. SEPTA described the hearing requirements in the proposed rule as ''sufficient'' [80] while NRC stated it agreed with this section as it appeared in the NPRM and noted that hearing is critical to the job of a dispatcher and the standards should be identical to those in parts 240 and 242.[81]

In contrast, IBEW expressed its opposition to part 245 containing any hearing acuity requirements. The labor organization felt such requirements were unnecessary as a dispatcher's hearing could be corrected with hearing aids and/or volume controls. IBEW also stated it was concerned this section gave too much discretion to a railroad's medical examiner.[82] An individual commenter also opposed these requirements claiming that in his 18 years of railroading, he was not aware of any accident caused by poor hearing. He said this section imposes an unnecessary burden on dispatchers and railroads.[83] Lastly, AAR and ASLRRA's comments on revising § 245.117 also apply to this section.

In response to these comments, FRA closely reviewed the tasks performed by dispatchers and determined that a dispatcher's hearing acuity is critical to their job of protecting the safety of the railroad and its employees. A dispatcher must be able to communicate clearly with peer dispatchers and field personnel to ensure on-track safety has been properly established, making a dispatcher's ability to hear a vital part of these clear and concise communications. Dispatchers rely heavily on communications from field employees in the performance of their tasks and often have to discern between relevant information and distracting background noises.

Dispatchers communicate safety sensitive instructions to countless entities in their day-to-day functions. As an example, providing protection for field employees often requires listening to read backs and repeats of instructions. The accuracy and proper understanding of these communications is vital to railroad safety, and thus, FRA concludes that dispatchers should have to satisfy certain hearing acuity standards.

Furthermore, removing the hearing acuity requirements would introduce several potential issues. First, a person may need a hearing aid to safely work as a dispatcher, but without a regulation requiring them to wear such hearing aid, they could choose not to wear one for various reasons. Second, a hearing aid amplifies all sounds; however, if a person has lost the ability to discern sounds at certain frequencies, no hearing aid, no matter how sophisticated, can restore that ability. Thus, it would be possible for a dispatcher to miss critical information that was conveyed at a frequency that they had lost the ability to hear. Third, railroad radios are notoriously noisy making it difficult to detect critical information and ignore other sounds such as radio feedback.

Therefore, after close review of the safety-sensitive tasks performed by dispatchers, FRA decided to retain the hearing acuity standards proposed in

[78] FRA–2022–0019–0041.

[79] *See* Federal Aviation Administration, Order 3930.3C, *available at https://www.faa.gov/documentLibrary/media/Order/Order_3930.3C_withCHG1.pdf.*

[80] FRA–2022–0019–0025.

[81] FRA–2022–0019–0033.

[82] FRA–2022–0019–0039.

[83] FRA–2022–0019–0020.

the NPRM. For the reasons explained in the Section-by-Section Analysis for § 245.117 above, FRA does not share IBEW's concern that this section gives too much discretion to a railroad medical examiner.

Section 245.119 Training Requirements

This section requires railroads to provide initial and periodic training to dispatchers. As an initial matter, FRA deleted paragraph (b) of this section in the NPRM. In the NPRM, paragraph (b) noted that a railroad's certification program must state whether the railroad elects to obtain authority for initially certifying a person as a dispatcher or to only recertify those persons who have been previously certified by other railroads. FRA removed this language from this section as it is duplicative of what is already required under § 245.107(b)(1)(i).

Several commenters requested that FRA incorporate more specific details into the requirements for this section. For example, ATDA and TTD submitted similar comments requesting FRA more clearly define a minimum standard training curriculum to include classroom instruction and training with field personnel. These labor organizations feel such training should entail time spent with roadway workers from signal and maintenance of way departments, train crews, and terminal personnel such as yardmasters and car inspectors, for prospective dispatchers to gain a proper understanding of the duties and responsibilities of these workers.

ATDA, IBEW, TTD, and SMART–TD all commented that FRA should require, in paragraph (c)(2) of this section in the final rule (paragraph (d)(2) in the proposed rule), a minimum of 160 hours of OJT for all candidates seeking initial certification. TTD, ATDA, and IBEW also contended that OJT should include requiring dispatchers to perform a physical, in-person review of a territory before they can become qualified on the territory. Their rationale is that an in-person review provides dispatchers with a better understanding of the territory that they will be dispatching over that cannot be achieved by other means such as maps, videos, and simulators. TTD and ATDA also believe physical reviews should be required once every two years for a dispatcher to maintain their qualification on a territory. An individual commenter made a similar suggestion, that a person should have a mandatory week of ''road days'' before they can qualify on a new territory, and they should have five road days per year to maintain their qualification on the territory.[84]

After reviewing these comments, FRA acknowledges the commenters' concerns and suggestions and is taking this opportunity to clarify the requirements of this section. FRA agrees that recent industry trends have resulted in declining quality and/or quantity of training and testing, a concern FRA has voiced to the industry on multiple occasions including recent disapproval of conductor certification programs. These instances reveal that some railroads have misinterpreted the discretion provided to them in parts 240 and 242 as permission to submit certification programs that are sparse on details. Such railroads are mistaken as to what is required under parts 240 and 242, and FRA audits have highlighted the significant issues with these programs and underscored the critical need for railroads to provide detailed and comprehensive submissions.

While FRA believes that railroads should be provided some flexibility in their program design to address their specific operational risks and unique needs, FRA's review and approval process outlined in § 245.103 is meant to ensure that railroads do not abuse this discretion with respect to their dispatcher certification programs. This rule requires a railroad to document the details of its training and testing program, including a determination as to how the program will ensure that prospective dispatchers are able to safely perform their assigned duties. Specifically, § 245.107 mandates that each railroad submission include sufficient detail for FRA evaluation. FRA will disapprove programs that are vague or insufficiently detailed, in accordance with § 245.103(f)(2).

In addition, this section codifies rigorous training requirements for dispatchers to ensure safe operations. Railroads must develop programs that include comprehensive training and continuous education, with detailed documentation of the methods of dispatcher training, the level of proficiency, and the frequency of refresher training.

While every railroad is different and the training needed to be a dispatcher for a Class I railroad may vary significantly from what is needed to dispatch for a short line railroad, FRA will review each railroad's program and determine on a case-by-case basis whether the program contains sufficient OJT. Thus, in accordance with § 245.107(b)(4) and paragraph (c) of this section, the burden will be on the railroad to state how many hours of OJT is required in its training program and to justify why that amount of OJT is sufficient to certify that their dispatchers are adequately trained to safely perform their dispatching duties. Pursuant to § 245.103, FRA will then determine whether the railroad has provided enough detail and support for its position on how much OJT it will require. Likewise, with respect to in-person territory reviews, some railroads may have territories where such in-person reviews would be greatly beneficial to the trainee while other railroads have territories where such reviews would be superfluous. Regardless, railroads will have to provide enough detail in their programs to show that the training they are requiring satisfies the requirements of this part and will ensure that their certified dispatchers are sufficiently trained.

Paragraph (b) of this section (paragraph (c) in the proposed rule) allows for third parties to conduct a training program on behalf of the certifying railroad. NRC requested that this rule require any third party instructor to be certified and to ''have met the same certification standards as the railroad for which he or she is delivering training.'' [85] If a third party is overseeing the OJT portion of a railroad's training program, then any person the third party provides as a qualified instructor would have to be a certified dispatcher as required by § 245.7. However, FRA does not see a need to expand the certification requirement beyond qualified instructors, such as to classroom instructors. Furthermore, since NRC did not provide a supporting rationale for its position, FRA is unpersuaded to make any such change.

NRC also commented that it agrees with the approach FRA took to the training requirements in paragraph (c) of this section (paragraph (d) in the proposed rule), and it recommends that FRA issue a circular or appendix that assists the industry with meeting these minimum standards. FRA does not plan to issue a separate circular or appendix at this time because § 245.107 addresses NRC's concern. Section 245.107, which is derived from Appendix B to part 240 and Appendix B to part 242, provides railroads with more information on how to design and structure their programs. This includes a description of what information should be included in each section of the program. FRA has found through its experience with locomotive engineer and conductor certification

[84] FRA–2022–0019–0020.

[85] FRA–2022–0019–0033.

that issuing a separate circular or appendix is unnecessary as railroads can instead look to the appendices in parts 240 and 242 for guidance on how to satisfy the requirements of those rules. Thus, FRA does not see a need for issuing a separate circular or appendix with respect to dispatcher certification. However, FRA is revising paragraph (c)(2)(i) of this section to change the reference to an ''employee'' in the NPRM to a ''person'' in this final rule since not all dispatchers are employees of the certifying railroad.

FRA received several comments on paragraph (e)(2) (paragraph (f)(2) in the NPRM) which provided that a certification candidate who is demonstrating OJT proficiency may perform such tasks under the supervision of a person with at least one year of experience as a dispatcher. Some commenters, such as TTD, ATDA, IBEW, NRC, and SMART–TD, stated this requirement should be increased to two years of experience. NRC added that the person providing the supervision should have no safety-related incidents in the previous two years. In contrast, APTA and SEPTA think FRA should remove the ''one year of experience'' requirement altogether. They argue that it should be left to the railroad to determine the minimum requirements for a dispatcher to perform the supervision described in this paragraph, since each railroad is unique and has different dynamics within its workforce. SEPTA also noted that ''[m]ost railroads are in transition and may have inexperienced dispatchers that may not have the railroad experience to sufficiently train a student on OJT.'' [86]

FRA has decided to revise this paragraph so that certification candidates may only perform OJT tasks under the direct onsite supervision of a qualified instructor. This also represents a change from the analogous provision in 49 CFR 242.119(e)(2) which allows candidates for conductor certification to perform OJT tasks under the supervision of a person with ''the necessary operating experience.'' In this rule, FRA wanted to provide railroads with more guidance about what would constitute ''necessary dispatching experience'' as the agency was concerned that the vagueness of such term could have negative safety implications. Thus, the proposed rule included a one year of experience requirement. However, after further consideration, FRA determined that the safety purposes of this rule would be best served if only qualified instructors were allowed to supervise OJT tasks. While a qualified instructor is not required to have two years of experience, many qualified instructors will have at least two years of experience and even those who do not, still must have demonstrated adequate knowledge and the necessary dispatching experience to effectively instruct in the field. Likewise, while FRA is not adopting NRC's suggestion that a person performing this supervision must not have any safety-related incidents in the previous two years, FRA believes that requiring that OJT tasks be supervised by a qualified instructor addresses NRC's concern about the safety record of the person doing the supervision. FRA disagrees with APTA and SEPTA that this requirement should be removed altogether. FRA thinks it is important to place restrictions on who can supervise certification candidates performing their OJT. Otherwise, a railroad could allow a dispatcher with very little experience (for example, two weeks on the job or even less) to supervise a dispatcher candidate during OJT. This would present a significant safety concern.

Finally, with respect to paragraph (h) of this section (paragraph (i) in the proposed rule) which addresses transfers of railroad ownership, NRC suggests that instead of saying that the acquiring company's dispatchers ''may receive familiarization training'' from the selling company, the rule should say they ''will receive training from the selling company.'' [87] Whether a selling company will provide familiarization training to the acquiring company's dispatchers is a decision that should be made between the two parties. If FRA were to make the permissive language in this paragraph mandatory, it would essentially be entangling itself in the contract negotiations between the two parties which is not FRA's role. FRA's main concern with respect to this issue is that the training is performed properly, not who performs the training. FRA does not see a compelling reason for mandating that the selling company provide this training and since NRC did not provide a rationale for this requested change, FRA is not adopting this suggestion.

NRC also contends paragraph (h) should apply when there is a change in the private operator of a commuter railroad. Since NRC did not provide a rationale for why such a change would be necessary or beneficial, FRA does not see a justification for making such change to the final rule. However, FRA notes that in situations involving a change in the operator of a commuter railroad, there is nothing in part 245 that would prohibit the prior operator from providing familiarization training to the new operator.

Section 245.120 Requirements for Territorial Qualification

This section explains the requirements for territorial qualifications. TTD and ATDA requested that this section be revised to require that a dispatcher have 80 hours of OJT on a territory before they can become qualified on that territory. The provided rationale for this proposal is that OJT is essential to ensuring dispatchers are properly trained on their territories. TTD, ATDA, and IBEW also commented that FRA should revise paragraph (c) of this section, which stated that to retain their qualification on a territory, a dispatcher could not be absent from that territory for more than 12 months. The unions believe this should be reduced to six months, as they contend that absences of six months or more lead to a ''loss of familiarity with the specifics of a territory such as locations of crossing, wayside defect detectors, and emergency response access points.'' [88] Additionally, these labor organizations requested that FRA set minimum OJT requirements for requalification on a territory, of at least 16 hours of OJT if a dispatcher is absent from a territory for 6–12 months; at least 24 hours of OJT if a dispatcher is absent from a territory for 12–24 months; and if a dispatcher is absent from a territory for 24 months or more, he or she should have to go through the same process as a dispatcher seeking their initial qualification on the territory.

FRA is declining to adopt the suggested change by the labor organizations to require a minimum of 80 hours of OJT to become qualified on a territory for reasons similar to its decision not to add more specific requirements to § 245.119. Just as every railroad is different, every territory is different, and railroads, not FRA, are in the best position to determine what requirements must be met to become qualified on a particular territory. In certain situations, requiring 80 hours of OJT on a particular territory may be unnecessary. For example, some territories may be relatively small or uncomplex so requiring 80 hours of OJT would be excessive, especially for an experienced dispatcher. Therefore, FRA thinks it would be unwise to add such a requirement to this rule, especially since the labor organizations have not provided any data or analysis to support their position that a minimum of 80

[86] FRA–2022–0019–0025.

[87] FRA–2022–0019–0033.

[88] FRA–2022–0019–0038.

hours of OJT is necessary to become qualified on a territory. Likewise, FRA is also not adopting the suggestion from the labor organizations that the rule set minimum amounts of OJT for a dispatcher to get requalified on a territory. FRA thinks these decisions should be left with the railroads and that this dispatcher certification system will work best if FRA creates the regulatory framework and the railroads have the discretion to determine how its dispatchers can become qualified on a territory within that framework. In addition, railroads are required to submit their dispatcher certification programs to FRA for approval. Therefore, FRA will evaluate railroad plans to provide OJT as part of their dispatcher certification programs on a railroad-by-railroad basis. This rule also requires railroads to provide a copy of the programs and the request for FRA approval to the president of each labor organization that represents the railroad's dispatchers and to all of the railroad's dispatchers that are subject to this part. Therefore, impacted labor unions and dispatchers who are not represented by a labor union will also have the opportunity to comment on the program.

FRA also received a comment from an individual requesting that this rule include restrictions on territory size and traffic. According to the commenter, technological advances have led railroads to ''consolidate and expand territory sizes beyond what is manageable.'' [89] The commenter expressed concern about more mistakes occurring on these large and busy territories especially among new, inexperienced dispatchers. Setting restrictions on the size of, and traffic on, a railroad's territories is beyond the scope of this rulemaking. Whether current railroad territory size and traffic is posing a significant safety threat is a subject that would require substantial review and analysis by FRA before proceeding with a rulemaking. Such analysis has not taken place, and thus, it would be improper for FRA to include any such restrictions in this rule.

Section 245.121 Knowledge Testing

This section requires railroads to provide for the initial and periodic testing of dispatchers. Paragraph (b)(4) of this section lists the subjects that a railroad's test must cover to determine whether an individual has the requisite knowledge to be a certified dispatcher. Both TTD and ATDA recommended revising the language in proposed paragraph (b)(4)(iv) as they alleged it would allow railroads to test dispatchers and dispatcher candidates on the physical characteristics of territories that they have not received training on and have no familiarity with. In this final rule, FRA has removed the reference to territories the person ''will be'' working on and instead states the test must cover the physical characteristics of the territory or territories that the person is currently working on or is receiving training to become qualified on, to address the organizations' concern. FRA also added ''or territories'' to this paragraph to acknowledge that a test may cover more than one territory.

AAR and ASLRRA recommended that FRA revise paragraph (b)(6) of this section to allow for greater use of open reference books and other materials. The associations noted that ''[r]ailroads currently train, teach, and encourage their employees to use reference materials in their daily activities. Railroad safety would be better served if FRA adopted the same approach for knowledge testing.'' [90] FRA agrees that reference materials play an important role in the work dispatchers perform, however, no changes to this paragraph are needed to address the issue. The regulation allows for the use of reference materials if a person is being tested on their ability to use such materials. Whether a test question is testing a person's ability to use reference materials is a determination made by the railroad, and the railroad is given some flexibility on this issue. For example, if a test question involves a scenario where a dispatcher may consult with reference materials if faced with the situation in the field, paragraph (b)(6) gives the railroad the discretion to allow the person seeking certification to use reference materials. Therefore, a railroad could make a substantial portion of its test ''open book.'' However, FRA thinks some dispatching principles and concepts are so essential that they should be memorized by the dispatcher and not require reference materials. Thus, FRA sees a benefit to having at least a portion of these knowledge tests be ''closed book.''

FRA also received comments requesting that the agency establish minimum passing scores for tests given in association with a railroad's training program. ATDA and IBEW recommended that FRA set 80% as a passing score. NRC suggested that 100% be the passing score for the physical characteristics portion of the exam and 90% be the passing score for the rest of the exam. TTD did not opine on what a passing score should be, but stated FRA should set a standard passing score so there are not many instances where a person's test score would constitute a passing grade for one railroad, but a failing grade for another railroad.

Despite these comments, FRA declines to set a minimum passing score for knowledge testing. The railroads are in the best position to determine what is an appropriate passing score for the tests they administer since they are more familiar with their dispatching operations, operating rules, and the physical characteristics of their territories. Furthermore, it is unclear what safety benefit would derive from FRA setting a minimum passing score for railroads. If a railroad felt the passing score FRA set was too high, it could make easier test questions to increase the likelihood that individuals will pass. This could have a negative safety effect if railroads make their knowledge tests too easy because they could certify individuals who do not have sufficient knowledge to safely perform the job. Thus, FRA's position is that the decisions about what constitutes a passing score are best left to the railroads. FRA also finds that the concern expressed by some commenters that a standard passing score is needed because railroads can rely on the determinations of other railroads is also misplaced. Under § 245.125(b)(3), when a railroad relies on certification determinations made by another railroad, it is still responsible for determining that the dispatcher has ''demonstrated the necessary knowledge concerning the railroad's operating rules, territory, dispatch systems and technology.'' Therefore, in most cases, the certifying railroad will have to give the dispatcher its own knowledge test.

NRC also commented that FRA should regulate how many times a person is allowed to take a knowledge test and suggested that it be no more than two attempts, with a third attempt at the manager's discretion.[91] FRA is deferring to the railroads on whether they wish to impose a limit on the number of times a person may take a knowledge test. The purpose of this section is to ensure all dispatchers have the requisite knowledge to safely perform their duties, not whether they demonstrate that knowledge on the first attempt or the fifth attempt. FRA can also envision a scenario where an FRA-imposed limit on the number of test attempts could have a deleterious effect on safety. A railroad could purposely make its knowledge tests easier out of fear that some dispatcher candidates

[89] FRA–2022–0019–0020.

[90] FRA–2022–0019–0041.

[91] FRA–2022–0019–0033.

would not otherwise be able to pass the test on the first two attempts and would be prohibited from becoming certified, resulting in a waste of the railroad's time and resources spent on training such individuals. Easier knowledge tests could lead to railroads certifying dispatchers who lack the requisite knowledge to safely perform their duties.

Lastly, ATDA and IBEW were both concerned that the proposed rule did not explicitly mention individuals with disabilities who may require special accommodations in testing situations. These labor organizations requested that FRA add language to the final rule to state that all persons subject to knowledge tests under part 245 are ''covered by all applicable facets of the Americans with Disabilities Act (ADA).'' [92] In this subpart, FRA is establishing general parameters for the testing that must be conducted to determine whether candidates for certification have the skills and knowledge necessary to perform the tasks that are assigned to certified dispatchers by the certifying railroad. However, FRA is not creating or administering the tests required by this part. Railroads continue to have the flexibility to determine how to develop and administer testing in accordance with Federal anti-discrimination laws, including Title I of the ADA. FRA finds it unnecessary to include language in this final rule to remind railroads that they need to comply with Federal anti-discrimination laws.

Section 245.123 Monitoring Operational Performance

This section requires railroads to provide each certified dispatcher with at least one unannounced compliance test each year. In response to this requirement, NRC requested that FRA define the parameters of an unannounced compliance test in a competency management plan. FRA is opting not to add more specific requirements to what constitutes an unannounced compliance test. As stated in the rule, this test shall cover railroad and Federal rules as well as territorial and dispatch systems. Beyond those basic requisites, FRA finds that the railroads are best positioned to determine the specific details about the contents of the test and how the test is administered. Since railroads are required under § 245.107(b)(5) to discuss their processes for unannounced compliance tests in their certification programs, these processes are subject to FRA review and approval under § 245.103. This system allows FRA to ensure that railroads are establishing sufficient processes for these tests without having to impose the more stringent guidelines requested by NRC.

FRA received several comments from labor unions requesting that language be added to this section prohibiting railroads from taking any disciplinary action against dispatchers for deficiencies noted during an unannounced compliance test unless such deficiency was related to a revocable event described in § 245.303(e). The unions suggested that railroads should instead address such deficiencies through coaching, counseling, and additional training. The purpose of this rule, as stated in § 245.1, is to establish minimum Federal safety standards for dispatchers and to ensure that only those persons who meet such standards work as dispatchers. Moreover, § 245.5(b) states that it is not FRA's intention to alter a railroad's authority to initiate disciplinary sanctions against its employees. Adding the language requested by the unions would be unrelated to this rule's purpose and would contravene § 245.5(b). Like the engineer and conductor certification rules, the only ''discipline'' this rule regulates pertains to a railroad's denial or revocation of a person's dispatcher certification. As was stated in the NPRM,[93] FRA believes it is up to each railroad to decide the appropriate action to take in such circumstances in light of various factors, including collective bargaining agreements.

To avoid restricting the options available to the railroads and employee representatives to develop processes for handling test failures, FRA designed this rule to be flexible. There are a variety of actions and approaches that a railroad could take, such as developing and providing formal remedial training for dispatchers who fail tests or have deficiencies in their performance. Each railroad could also consider implementing a formal procedure whereby a dispatcher is given the opportunity to explain, in writing, the factors that they believe caused their test failure or performance deficiencies. This explanation may allow a railroad to determine what areas of training to focus on or perhaps discover that the reason for the failure/deficiency was due to something other than a lack of skills. FRA believes there are numerous other approaches that could be considered and evaluated by railroads and their dispatchers, and FRA does not want to unnecessarily limit a railroad's ability to adopt an approach that is best for its organization. While FRA encourages the railroads and unions to work together to resolve these issues, such matters are best addressed in collective bargaining agreements and a railroad's internal discipline system, not in this rule.

Paragraph (c) of this section creates an exception where a railroad does not have to give a certified dispatcher an unannounced compliance test if that person is not performing service that requires certification. However, if a certified dispatcher returns to service requiring certification, the railroad will need to perform an unannounced compliance test within 30 days of the dispatcher's return to service. In this final rule, FRA is adding language to paragraph (c) to clarify when railroads are required to give a dispatcher an unannounced compliance test within 30 days of their return to service. Specifically, FRA is adding language that states the requirements in paragraph (c) apply if the person is returning to dispatcher service ''after not being given an unannounced compliance test in a calendar year.''

This distinction is best illustrated through an example. A dispatcher performs service requiring certification from January 2025 to June 2025 and during that time, they do not receive their unannounced compliance test for calendar year 2025. Starting on July 1, 2025, the dispatcher moves into a position that does not require certification and works in that position for the rest the year. On January 1, 2026, the dispatcher returns to service requiring certification. Under paragraph (c), the railroad would have to give the dispatcher an unannounced compliance test by January 31, 2026 (within 30 days of their return to service), because they were not given a test in calendar year 2025. Alternatively, if the railroad had given the dispatcher an unannounced compliance test during the first six months of 2025, paragraph (c) would not apply because the dispatcher would not have missed their unannounced compliance test for calendar year 2025. Thus, upon the dispatcher's return to service requiring certification, the railroad would not need to give the dispatcher an unannounced compliance test within 30 days.

ATDA and IBEW both expressed concerns that paragraph (c) would allow a railroad to test a dispatcher immediately upon their return to service, which could be unfair to the dispatcher. ATDA requested that FRA add language to the final rule stating that such test can only be conducted after the dispatcher received any

[92] FRA–2022–0019–0038; FRA–2022–0019–0039.

[93] 88 FR 35574, 35591 (May 31, 2023).

necessary retraining or familiarization required by §§ 245.119, 245.120, and 245.121. IBEW stated that FRA should not allow these unannounced compliance tests to occur until at least 15 days after the dispatcher has returned to service requiring certification.

FRA is declining to make these requested changes. Regarding ATDA's comment, FRA finds that adding language referencing §§ 245.119, 245.120, and 245.121 is unnecessary. As discussed in § 245.107(b)(2)(i), a railroad's certification program must contain a continuing education component and the railroad is obligated to abide by the requirements in its program. Therefore, if any retraining is required under the railroad's program upon a dispatcher's return to service requiring certification, then the railroad is already obligated to provide such training, without FRA adding any such language to paragraph (c). With respect to refamiliarization, if a dispatcher has been away from a territory long enough that they are no longer qualified, they would be unable to dispatch over that territory without the assistance of a Dispatcher Pilot until they were refamiliarized as required by § 245.120(a)(2). Thus, it logically follows that even without revising paragraph (c) of this section, a railroad would not provide a returning dispatcher with an unannounced compliance test until any necessary refamiliarization training was performed, as the dispatcher would not perform such test on a territory where they were unqualified.

In response to IBEW's comment, FRA does not see a safety benefit to prohibiting railroads from giving an unannounced compliance test within 15 days after a dispatcher has returned to service requiring certification. To the contrary, if a person has been away from dispatching for so long that they did not receive an unannounced compliance test in a calendar year, it would behoove the railroad to give such a test as soon as possible. If a person is a certified dispatcher, they are expected to perform their job functions safely, regardless of whether they last dispatched two days ago or two years ago. Part 245 does not include a moratorium that prohibits a railroad from revoking a dispatcher's certification for any events that occur within the first 15 days of their return to service. Likewise, FRA does not see a reason to institute such a moratorium on giving an unannounced compliance test during this period. Lastly, this paragraph was modeled after §§ 240.129(b)(1) and 242.123(b)(1) which allow for an unannounced compliance test to occur at any point within a locomotive engineer or conductor's first 30 days returning to service requiring certification. FRA is not aware of any issues that have arisen in locomotive engineer or conductor certification as a result of these requirements. Thus, FRA does not see an adequate rationale for changing this requirement in dispatcher certification.

Section 245.125 Certification Determinations Made by Other Railroads

In this final rule, FRA has moved what was paragraph (b) of this section in the proposed rule to § 245.107(b)(2)(vi) and (b)(4)(iv). FRA determined that it was more appropriate to put proposed paragraph (b) in the section of this rule that contained the specific requirements for a railroad's certification program.

Section 245.201 Time Limitations for Certification

This section contains various time constraints to preclude railroads from relying on stale information when evaluating candidates for certification or recertification. Paragraph (a)(3) in the NPRM stated that railroads could not rely on knowledge tests there were conducted more than one year before the date of the railroad's certification decision and paragraph (a)(4) stated that the knowledge test must be within two years prior to the certification decision if the railroad administers knowledge tests at intervals that do not exceed two years. For the final rule, FRA decided to combine these two paragraphs into paragraph (a)(3).

Section 245.205 List of Certified Dispatchers and Recordkeeping

This section requires railroads to maintain a list of its certified dispatchers. Several labor organizations, including TTD, ATDA, and IBEW, requested that this section be revised to compel railroads to provide their list of certified dispatchers to their dispatcher employees and the relevant labor organization presidents. TTD and ATDA also stated the rule should include a 60-day period for unions and employees to review and confirm the accuracy of the list. While FRA has no opposition to railroads providing these lists to their dispatchers and labor organization presidents, FRA declines to impose this requirement because sharing such lists is an internal matter that should be resolved between the railroads and the labor organizations and FRA does not see a compelling safety reason to mandate a particular approach.

Section 245.207 Certificate Requirements

This section contains the requirements for the certificate that railroads will be required to issue to each certified dispatcher. FRA is making a minor change to paragraph (a)(1) in the proposed rule, by allowing the certificate to identify the parent company that is issuing the certificate. This change acknowledges that in some cases, a parent company may have a single certification program for all of the railroads under its control. This change also brings this paragraph into conformity with parts 240 and 242.

AAR and ASLRRA commented that railroads should not be required to include a dispatcher's year of birth on a dispatcher's certificate. After consideration of this comment, FRA agrees that including the year of birth on the dispatcher certificate is unnecessary and is removing this requirement in the final rule. The purpose of the requirements in paragraph (a)(3) is to identify an individual dispatcher, and, as AAR and ASLRRA stated, the birth year provides little to no assistance in confirming a person's identity, and there are other ways, such as a physical description or photograph of the dispatcher, which is already included in paragraph (a)(3), that better serve this goal. They added that instead of the birth year, FRA could require a person's hire date on the certificate. However, the hire date provides even less relevant information than the birth year in terms of identification. Thus, FRA sees no reason to require the hire date on a dispatcher's certificate.

APTA recommended that the requirement in paragraph (a)(6) of this section that the certificate include the expiration date be removed in the final rule, because it is not required in parts 240 and 242, and ''because there are other annual requirements that an expiration date greater than annually could cause confusion.'' [94] FRA concedes that an expiration date is not currently required on a locomotive engineer or conductor certificate,[95] however, FRA is unclear why such a requirement would cause confusion. Also, a certificate can last for up to three years under § 245.201(c), so the expiration date would not be ''greater than annual'' as APTA suggests. Thus, FRA is unpersuaded by APTA's argument. FRA sees no basis for removing this requirement, as the expiration date provides a key piece of information that is equal in importance

[94] FRA–2022–0019–0036.

[95] 49 CFR 240.223(a) and 242.207(a).

to the effective date of the certificate, as it tells when a certificate is no longer valid.

FRA is making a stylistic change to paragraph (a)(6) in this final rule. In the NPRM, paragraph (a)(6) referenced paragraph (b) of this section, which stated that if a person was designated as a dispatcher under § 245.105(c) or (d), then their certificate did not need to include an expiration date.[96] The rationale for this exception is that the expiration date of a designated dispatcher's certificate is three years after FRA approves the railroad's certification program.[97] Thus, the expiration date of a designated dispatcher's certificate will not be known until FRA approves the railroad's certification program. In this final rule, FRA deleted proposed paragraph (b) and instead incorporated this exception directly into paragraph (a)(6), by stating that a certificate must include the expiration date ''unless the certificate was issued pursuant to § 245.105(c) or (d).''

Section 245.213 Multiple Certifications

This section addresses various issues involving persons who have, or are seeking to obtain, multiple certifications. In this final rule, FRA added a standalone paragraph (c) to this section which states that paragraphs (c)(1) through (3) apply to persons who are currently certified dispatchers for multiple railroads or are seeking to become certified dispatchers for multiple railroads.

Paragraph (d) discusses how the revocation of a dispatcher's certification would affect an individual's ability to work in another railroad craft that requires certification, and vice versa. The general rule articulated in paragraph (d) is that if a dispatcher's certification is revoked for an alcohol or drug violation, they may not work in another certified craft during the period of revocation, and vice versa. However, if a dispatcher's certification is revoked for a violation that does not involve alcohol or drugs, the person may work in another certified craft during the revocation period, and vice versa.

NRC commented that it agreed with this approach. In contrast, AAR and ASLRRA expressed their view that if a dispatcher's certificate is revoked for *any* reason, that person should not be allowed to work in another certified craft during the period of revocation, and vice versa. Their explanation is that if a person commits a safety violation in one craft, that shows ''a disregard for process, and there should not be an assumption that the employee's disregard is function or craft specific.'' [98] The associations also contend that 49 CFR 240.308(f) and 242.213(h) do not allow a decertified conductor to work as a locomotive engineer or vice versa.

As an initial matter, the assertion by AAR and ASLRRA that parts 240 and 242 do not allow a decertified conductor to work as a locomotive engineer is not accurate. Under 49 CFR 240.308(f) and 242.213(h), if a person's conductor certification is revoked for a violation described in 49 CFR 242.403(e)(6) through (11), they may still work as a locomotive engineer during the revocation period. FRA's rationale for this distinction is that 49 CFR 242.403(e)(6) through (11) involve violations of 49 CFR part 218, subpart F, and since locomotive engineers cannot have their certifications revoked for such violations, ''it would be unfair to prohibit a person from working as an engineer for a violation that currently would not result in the revocation of his or her engineer certificate.'' [99] For similar reasons, FRA finds that it would be unfair to prohibit a person from working as a dispatcher because they passed a stop signal while working as a locomotive engineer, or because they committed some other violation that would not otherwise result in the revocation of their dispatcher certificate. However, AAR and ASLRRA's proposal would lead to such unfair treatment between persons with a single certification and persons who are certified in multiple crafts. AAR and ASLRRA requested that FRA adopt the same approach in part 245 that it did in parts 240 and 242. For the reasons stated above, FRA believes that the proposed rule did adopt the same approach taken in parts 240 and 242 and does not see a reason to make any changes to this section in the final rule.

Furthermore, as noted in the NPRM,[100] the tasks performed by a dispatcher are so inherently different from the tasks performed by persons in other certified crafts that it does not automatically follow that a person's revocable event as a dispatcher indicates they are more likely to have a revocable event while performing another certified craft, and vice versa. Therefore, under this final rule, a dispatcher may continue to work as a dispatcher if their certification is revoked for any of the violations described in 49 CFR 240.117(e) or 242.403(e) that do not involve use of alcohol or drugs. Similarly, a person can continue to work in another certified craft if their dispatcher certification has been revoked for a violation described in § 245.303(e)(1) through (6).

Section 245.215 Railroad Oversight Responsibilities

This section requires each Class I railroad (including the National Railroad Passenger Corporation), each railroad providing commuter service, and each Class II railroad to conduct an annual review and analysis of its program for responding to detected instances of poor safety conduct by certified dispatchers. Both TTD and ATDA requested that FRA mandate that a railroad provide the data obtained through this annual review and analysis of its certification programs to the president of each labor organization that represents the railroad's dispatchers. The labor organizations contend this would benefit railroad safety as railroads and unions could work together to address potential deficiencies and safety issues. It would also promote collaboration between the two parties. FRA agrees that sharing this information should benefit railroad safety by promoting communication and collaboration between the railroads and the labor unions. Thus, FRA has revised paragraph (d) of this section to allow the president of a labor organization representing the railroad's dispatchers to request that the railroad provide a report of the findings and conclusions reached during the railroad's annual review and analysis required under this section. FRA is also allowing the railroad's certified dispatchers who are not represented by a labor organization to make such a request.

FRA made some revisions to paragraph (e) from what appeared in the NPRM due to changes to the list of revocable events found in § 245.303(e). The reasoning behind these changes is explained in the Section-by-Section Analysis for § 245.303.

Section 245.303 Criteria for Revoking Certification

This section describes the circumstances under which a dispatcher's certification may be revoked. APTA requested that FRA revise paragraph (c) of this section, which requires railroads to revoke the certificate of a dispatcher who is monitoring, piloting, or instructing a dispatcher if they fail to take appropriate action to prevent a violation described in paragraph (e) of this

[96] 88 FR 35623.

[97] *See* 49 CFR 245.105(f).

[98] FRA–2022–0019–0041.

[99] 76 FR 69802, 69825 (Nov. 9, 2011).

[100] 88 FR 35594.

section.[101] APTA is concerned that this could be construed to apply to higher levels of managers and supervisors within a control center who are providing high level oversight but are not closely monitoring the dispatcher in question. FRA agrees with APTA that the intent of this paragraph is not to apply to persons providing high level oversight. To clarify this intent, FRA is adopting APTA's suggestion by explicitly stating that paragraph (c) applies to the person assigned to monitor, pilot, or instruct the dispatcher.

Paragraph (e) of this section provides a specific list of events which would require a railroad to revoke a dispatcher's certification. NRC disagrees with FRA's decision to give examples in this paragraph as it ''runs the risk of over-specification.'' [102] Instead, NRC suggests that '' '[r]evocation should be considered based on violation of any applicable rules and standards.' '' [103] FRA respectfully disagrees with NRC's position. While it is important to provide railroads with a certain degree of flexibility in many aspects of this rule, the issue of what constitutes a revocable event is an area where uniformity is vital. If Railroad A considered a particular action or inaction revocable, but Railroad B did not, it would lead to disparate treatment of dispatchers. Also, if NRC is suggesting that any rules violation should lead to a revocation, FRA disagrees as some rule violations are more serious than others. Not all rule violations warrant a 30-day (or longer) revocation which is why FRA created the list in paragraph (e), which it determined are the most serious rule violations a dispatcher can commit.

Paragraph (e)(1) in the proposed rule listed ''[f]ailure to provide proper protection of a reported inoperable or malfunctioning highway-rail grade crossing'' as the first revocable event. ATDA recommended that this paragraph be deleted, since proposed paragraph (e)(6) stated revocation was warranted for a failure to properly issue or apply mandatory directives. Since grade crossing protection is a type of mandatory directive, ATDA thought proposed paragraph (e)(1) was redundant. FRA agrees with ATDA's comment and has removed proposed paragraph (e)(1) from the final rule. Instead of renumbering all of paragraph (e), FRA is moving proposed paragraph (e)(6) to paragraph (e)(1) in this final rule. Additionally, proposed paragraph (e)(7) is now paragraph (e)(6) in the final rule and proposed paragraph (e)(8) is now paragraph (e)(7) in the final rule.

Paragraph (e)(2) in the proposed rule stated that a dispatcher's certification shall be revoked for ''[g]ranting permission for a train or on-track equipment to enter into an out-of-service or blue flag protected track.'' TTD, ATDA, and IBEW requested that FRA change ''granting permission for'' to ''improperly authorizing'' in this paragraph. The labor organizations' rationale for this change is that sometimes it is necessary and permissible to authorize on-track equipment to occupy out-of-service track. FRA agrees that such permission might be appropriate, and a dispatcher should not have their certification revoked in such circumstances. Therefore, FRA is adopting the unions' suggested change to paragraph (e)(2).

Paragraph (e)(4) calls for a dispatcher's certification to be revoked for the removal of blocking devices or established protection of Roadway Worker In Charge (RWIC) working limits prior to the RWIC releasing the limits. TTD, ATDA, and IBEW all submitted comments requesting that FRA add language to this paragraph so that such actions would only warrant revocation if they resulted in workers occupying limits without proper protection. Their rationale for this position is that if this action does not result in workers being left unprotected, then it should not be a revocable event because it did not present a safety hazard to anyone. FRA strongly disagrees with the labor organizations' position on this issue. Removing a blocking device or other established protection of RWIC working limits prior to the RWIC releasing such limits constitutes a serious offense that warrants revocation regardless of whether any workers were left unprotected. Under the labor organizations' proposal, if a dispatcher removed a blocking device or other protection before the RWIC released the limits, whether the dispatcher's certification got revoked would essentially come down to a question of luck. If there was no one in the working limits, then one dispatcher's certification would not be revoked. However, another dispatcher would have their certification revoked because someone was in the working limits. In FRA's opinion, the two dispatchers in these scenarios should be treated consistently under this rule and therefore FRA declines to adopt the union's proposal.

While FRA disagrees with this suggestion from the labor organizations, it concedes that it would not be unprecedented for the agency to make an event only revocable under certain circumstances. For example, in both parts 240 and 242, a violation of the conditional clause of restricted speed rules is only considered a revocable offense if it results in an accident or incident that must be reported to FRA under 49 CFR part 225 (part 225).[104] Likewise, the list of revocable events for conductors includes several violations related to 49 CFR part 218, subpart F which are only considered revocable if they result in a reportable accident under part 225.[105] These types of rule violations can vary significantly in their severity. Some of these violations can be relatively minor, which is why in parts 240 and 242, FRA attached the additional condition that they must cause a reportable accident to be a revocable event. The rationale behind this distinction is that if a reportable accident occurred as a result of such violation, that indicates that the crew member committed a more severe violation. In contrast, FRA thinks that a dispatcher removing a blocking device or established protection of RWIC working limits prior to the RWIC releasing the limits is such a severe violation that FRA does not need to attach any additional conditions to make the event revocable. It stands by itself as a serious offense, similar to the way passing a stop signal, occupying main track without authority, and operating at 10 or more miles per hour (mph) above the maximum authorized speed do not require any additional conditions to be revocable for operating crew members. Thus, FRA is not making any changes to paragraph (e)(4) of this section.

Like the comments on paragraph (e)(4), TTD, ATDA, and IBEW requested that FRA place conditions on the revocable events found in paragraphs (e)(1) (listed as paragraph (e)(6) in the NPRM) and (e)(5). Paragraph (e)(1) requires revocation for a failure to properly issue or apply mandatory directives when warranted. ATDA requested that the following language be added to the end of this paragraph: ''resulting in roadway worker, train, or on[-]track equipment occupying limits without proper protection or trains or on-track equipment exceeding maximum authorized speed by greater than 10 miles per hour.'' [106] ATDA

[101] Paragraph (e) of this section lists the seven types of violations that warrant revocation of a dispatcher's certification.

[102] FRA–2022–0019–0033.

[103] FRA–2022–0019–0033.

[104] 49 CFR 240.117(e)(2) and 242.403(e)(2).

[105] 49 CFR 242.403(e)(6) through (11).

[106] FRA–2022–0019–0038.

alleges that if FRA does not add this language, a dispatcher could have their certification revoked for a ''simple improper issuance of an authority number'' but that does not in any way change the protection that is provided.[107] TTD and IBEW advocated for similar language to that proposed by ATDA. As for paragraph (e)(5), which calls for revocation for failure to properly apply blocking devices or establish proper protection for specified working limits or movements of trains or on-track equipment, the unions said this should only be a revocable event if it results in trains or on-track equipment occupying limits without proper protection. FRA is declining to adopt the unions' proposed changes to paragraphs (e)(1) and (5) in the final rule for the same reason that it did not adopt the unions' proposed changes to paragraph (e)(4). In other words, FRA finds that the events, as described in paragraphs (e)(1) and (e)(5), warrant revocation on their own without attaching any additional conditions.

In this final rule, the term ''proper protection'' is used in paragraph (e)(5). APTA requested that FRA clarify whether the standard for ''proper protection'' is defined by Federal regulations or the railroad's operating rules. Paragraph (e) answers this question by noting that for an event to warrant revocation, it must involve a violation of the railroad's operating rules or practices. Thus, in making the determination as to whether a revocable event described in paragraph (e)(5) occurred, the railroad must determine whether the dispatcher failed to establish proper protection (as defined by the railroad's operating rules or practices) for specified working limits or movements of trains or on-track equipment.

FRA also received several comments on what is paragraph (e)(6) in the final rule (which was paragraph (e)(7) in the proposed rule). This paragraph states that a dispatcher's certification shall be revoked for granting permission, without prior approval, for a train to enter PTC or Cab Signal limits with inoperative or malfunctioning PTC or Cab Signal equipment. APTA commented that this paragraph should explain where the ''prior approval'' comes from or be revised to account for the particulars of each railroad. APTA proposed the following revision: '' 'granting permission for a train to enter PTC or CSS limits with inoperative or malfunctioning PTC or CSS equipment in a manner not in accordance with applicable railroad operating rules[ ].' '' [108] FRA agrees with APTA's revision and is adopting this proposed language except for the reference to ''applicable railroad operating rules'' as such reference would be redundant since paragraph (e), which precedes the list of revocable events found in paragraphs (e)(1) through (7), already refers to violations of the railroad's operating rules or practices.

ATDA recommended that paragraph (e)(6) be revised to say the following action constitutes a revocable event: ''[f]ailure to establish proper protection for a train to enter Positive Train Control (PTC) or Cab Signal limits with inoperative or malfunctioning PTC or Cab Signal equipment which results in the train occupying PTC or Cab Signal limits without proper protection.'' [109] ATDA believes its suggested revisions more properly address the intent of the provision. FRA is not adopting this revision because it thinks APTA's proposed revision best conveys the agency's intent while also addressing ATDA's concerns regarding the language in the NPRM. FRA disagrees with ATDA condition that the events described in this paragraph should only be revocable if they result in a train occupying PTC or Cab Signal limits without proper protection. FRA is rejecting this proposed language for the same reason that it rejected the labor organizations' proposed conditions to paragraphs (e)(1), (e)(4), and (e)(5) discussed above, as FRA thinks the event described in paragraph (e)(6) warrants revocation without attaching any additional conditions.

TTD commented that for any incident involving a dispatcher's failure to issue a speed restriction, including with respect to paragraph (e)(6) in the final rule, FRA should adopt ''the same criteria in excess of 10 mph'' referencing 49 CFR 240.305(a) and 242.403(e).[110] While it is not entirely clear what TTD means by this comment, FRA infers that TTD thinks an event should only warrant revocation if the dispatcher should have issued a speed restriction that is at least 10 mph below the normal authorized speed. As an initial matter, FRA finds that a failure to issue a speed restriction by itself warrants revocation without attaching any additional conditions. Further, from a practical matter, speed restrictions are rarely issued for less than 10 mph below the normal operating speed, thus, TTD's proposed change would apply to a very small number of cases. Therefore, FRA is not adopting TTD's proposed change.

NRC questioned the relevance of including paragraph (e)(6) in the final rule as a revocable event as such failure should be covered by operating rules. However, if an action is not listed in paragraph (e) of this section, then a railroad cannot revoke a dispatcher's certification for such action, even if it constitutes a violation of an operating rule. Since FRA thinks the action described in paragraph (e)(6) warrants revocation, it must be included in this final rule.

One individual commenter criticized FRA's list of revocable events in paragraph (e) stating that under the structure of this rule, FRA runs the risk of having every dispatcher in the country out of service. Instead, the commenter said FRA should perform a study to determine what are the most common dispatching errors. The commenter also stated that FRA should make sure retaliation is not a factor in revocation, and that the revocable offenses constitute serious safety issues.[111] FRA does not share this commenter's concerns about this list of revocable events. In drafting this list, FRA sought to compile the most serious violations a dispatcher could commit. The agency sought input on this list from the public and based on that feedback, has composed this list for the final rule. The listed violations involve serious errors that should rarely occur in the field. Thus, it is unclear how FRA is running the risk of having every dispatcher out of service. Furthermore, in drafting this list, FRA attempted to draw a bright line as to whether an event warranted revocation. This significantly limits the discretion a railroad has in its decision to revoke which reduces the likelihood that retaliation could factor into a railroad's decision.

APTA and the Metropolitan Transportation Authority (MTA) each commented on the potential interaction between part 245 and the Confidential Close Call Reporting System (C^3RS), an FRA-sponsored program that allows railroad employees reporting close calls to receive certain protections, which currently include protection from decertification for locomotive engineers and conductors. Each C^3RS program is established through an implementing memorandum of understanding (IMOU) signed by FRA and the participating railroad and labor organization(s). Under the current process, the participating railroad then submits to FRA a petition to waive specific part

[107] FRA–2022–0019–0038.

[108] FRA–2022–0019–0036.

[109] FRA–2022–0019–0038.

[110] FRA–2022–0019–0037.

[111] FRA–2022–0019–0016.

240 and/or part 242 requirements necessary to implement the IMOU's decertification protections. A waiver granted by FRA then incorporates the IMOU's protections by reference. APTA and MTA request that FRA add language to this regulation which would state that those railroads with existing C³RS programs with part 240 and 242 waivers do not have to similarly apply for a waiver of part 245, as their C³RS protections should automatically be applied to part 245 revocable events. APTA and MTA also request that FRA identify in the rule whether any revocable events for dispatchers will not be afforded C³RS protections.

While FRA appreciates the commenters' desire for a more streamlined C³RS process, their request is beyond the scope of this rule and risks introducing inconsistency and confusion into the C³RS implementation process. Specifically, addressing C³RS in this rule would treat dispatchers differently than locomotive engineers and conductors, who receive C³RS decertification protection only pursuant to part 240 and 242 waivers. The proposed approach would also treat dispatchers at new C³RS programs differently, as railroads joining C³RS after the publication of the rule would still have to file a part 245 waiver petition. This inconsistency could create confusion and lead to dispatchers at C³RS-participating railroads being uncertain about whether they were protected by the terms of a waiver or by C³RS-related provisions in part 245 (particularly dispatchers hired after the date of this final rule who would not necessarily know when their railroad implemented C³RS for dispatchers). Such confusion would be compounded if this rule specified which revocable events were not afforded C³RS protections, as any such regulatory provision could differ substantively from the provisions of an applicable IMOU and waiver.

Confusion is further risked because only some existing C³RS IMOUs cover dispatchers, not all. Using part 245 to provide C³RS decertification protection to dispatchers at railroads with ''existing'' C³RS programs could therefore be particularly confusing for dispatchers at railroads with existing C³RS programs that do not currently include dispatchers. Such dispatchers may mistakenly believe that they are covered by C³RS simply through the action of part 245, not realizing that they lack protection due to the absence of an IMOU that applies to them.

Overall, FRA believes that to promote dispatcher confidence in C³RS reporting, dispatchers must be absolutely certain about the decertification protection they will receive. Such confidence is best promoted by a clear understanding that all dispatchers may only report pursuant to an IMOU and waiver that specifically apply to their railroad, rather than having some dispatchers protected by separate provisions in part 245, depending on whether they were covered by a C³RS program at the time the final rule is published.

However, RSAC has established a C³RS Working Group tasked, in part, with examining how C³RS could be expanded industry-wide without a separate waiver being required for each participating railroad.[112] Instead of addressing C³RS in this rule, FRA finds it preferable to allow the RSAC C³RS Working Group to perform its work and to apply any RSAC-recommended improvements consistently to locomotive engineers, conductors, dispatchers, and any other certified craft through a future rulemaking or some other means. In the meantime, any railroad that already has a C³RS program that applies to dispatchers will need to file a request to modify its waiver if the railroad would like the program's decertification protections to apply to its dispatchers. Likewise, a railroad that is not currently participating in C³RS (or a railroad that has a C³RS program, but one that does not apply to its dispatchers) will need to file a petition for relief if the railroad decides to implement a C³RS program covering dispatchers.

Finally, paragraph (i) of this section prohibits a railroad from revoking a dispatcher's certification if the revocable event occurred during an operational test that was not conducted in conformance with part 245, the railroad's operating rules, or the railroad's program under 49 CFR 217.9. AAR and ASLRRA commented that FRA should take into consideration the type of error that occurred and whether it harmed the dispatcher. If the error was a minor procedural error that did not cause substantial harm to the dispatcher, the associations contend there is no safety basis to preclude railroads from revoking the dispatcher's certification if a dispatcher committed a revocable offense during such test. FRA disagrees. When railroads perform such operational tests, they have a duty to ensure the tests are done properly under both Federal law and the railroad's own rules. Keeping paragraph (i) in its current form will incentivize railroads to fulfill this duty. If FRA adopted the associations' suggestion, it would create a gray area where one did not previously exist. It would also complicate the job of the Certification Review Board (CRB) as some dispatchers would presumably raise this issue in their petitions to the CRB. The CRB would then have to determine whether an error on an operational test caused the dispatcher substantial harm. FRA finds that with respect to this issue, a bright-line rule is preferable. It should not be a heavy burden for railroads to properly perform these operational tests, thus, FRA is not making any changes to this paragraph from the proposed rule.

Section 245.305 Periods of Ineligibility

In this section, FRA provides details on how a railroad shall determine a person's period of ineligibility if they have their dispatcher certification revoked. FRA received several comments from individual commenters who were critical of the discipline structure in this section. One commenter described the discipline structure in this rule as ''insane'' and argued that this rule is about job cuts and not railroad safety. This commenter also stated that a majority of the dispatchers they have questioned are not in favor of certification.[113] Another individual commented that this rule will make it easier for railroads to retaliate against employees and hold them out of service for ''minute clerical error[s]'' and to circumvent litigation brought under the Federal Railroad Safety Act for unjust retaliation.[114]

FRA disagrees with these commenters, as it finds the discipline structure in this rule to be reasonable. The revocable offenses described in § 245.303(e) constitute serious violations, not minute clerical errors. Given the seriousness of these offenses, if a dispatcher is found to have committed such a violation, that person should be held out of service for the prescribed period. This discipline structure mirrors what has been in place for locomotive engineers and conductors for years. Since FRA did not receive any comments that provided a rationale for why dispatchers should be treated differently, FRA sees no reason to make any changes to this section. Because the revocable events and the periods of ineligibility provide very little discretion to the railroads, this limits the likelihood of a dispatcher being subject to unjust retaliation by the railroad.

Paragraph (b) of this section provides the revocation periods based on the

[112] See Task No. 2022–03.

[113] FRA–2022–0019–0024.

[114] FRA–2022–0019–0015.

number of revocable violations a dispatcher has committed over a certain period. AAR requested that FRA ''clarify that the 36-month period is on a rolling basis, such that each new revocation has the potential to extend the 36-month clock.'' [115] The 36-month period in paragraphs (b)(3) and (4) is a lookback period from the most recent violation. For example, if a certified dispatcher committed a violation described in § 245.303(e)(1) through (7) on January 1, 2028, the railroad would have to determine how many revocable violations the dispatcher committed from January 1, 2025, to January 1, 2028. If the dispatcher had two additional revocable events during this time period (making the violation on January 1, 2028 the third such violation), then paragraph (b)(3) would apply, and the railroad would have to revoke the dispatcher's certification for one year.

In their joint comment, AAR and ASLRRA also criticize the periods of ineligibility in this section for being too lenient and recommend that FRA revise paragraph (b)(4) so that if a dispatcher has four revocable events in a 36-month period, they are no longer eligible to be certified. As an initial matter, this section only addresses how long a person is ineligible to work as a dispatcher following an incident described in § 245.303(e). This section does not limit the discipline a railroad can issue in response to a revocable event, other than limiting the amount of time the railroad can revoke the dispatcher's certification. For example, if a certified dispatcher commits a violation described in § 245.303(e)(1), and the dispatcher has no prior history of committing a revocable event, paragraph (b)(1) of this section prohibits the railroad from revoking the dispatcher's certification for more than 30 days. However, the railroad can choose to hold the dispatcher out of service for longer than 30 days, or can terminate the dispatcher, if it thinks such discipline is warranted.

FRA is declining to adopt the associations' proposal to revise paragraph (b)(4) so that four revocable events in a 36-month period would render a person permanently ineligible to hold certification. FRA thinks a three-year revocation period is a reasonable penalty, and it aligns with the discipline structure found in parts 240 and 242. Furthermore, FRA already has an established process in place for disqualifying persons from performing safety-sensitive work on either a temporary or permanent basis. If a railroad finds a dispatcher's actions are so egregious that they warrant disqualification, the railroad can refer the case to FRA, and the agency can determine whether to initiate the disqualification procedures proscribed in 49 CFR part 209, subpart D. FRA believes the process outlined in part 209 is preferable to creating a blanket requirement in this rule that would permanently disqualify a person from working as a dispatcher.

Paragraph (d) of this section provides a list of conditions that would allow a railroad to shorten a dispatcher's revocation period. ATDA requested that this paragraph be revised to require that railroads offer dispatchers training in exchange for a reduction in their revocation period. ATDA contended this change would be beneficial because all revocable events should lead to ''some form of retraining to ensure that the individual has a proper understanding of the events which occurred and to help ensure compliance in the future.'' [116] ATDA's proposal would also make the process of reducing a dispatcher's revocation period more objective as all dispatchers would be provided with an equal opportunity to receive training to reduce their revocation period. While FRA appreciates ATDA's position, it is not adopting this proposal. FRA thinks railroads should have discretion in determining whether to reduce a dispatcher's revocation period. A railroad may deem certain violations so egregious that they don't warrant a reduction in the revocation period. Therefore, FRA finds that it would be inappropriate to mandate that railroads reduce the revocation period for such incidents as long as the dispatcher participated in the retraining that the railroad was required to provide.

Lastly, NRC requested that FRA more clearly define what is meant by ''adequate remedial training'' in paragraph (d)(3). NRC also recommended deleting paragraph (d)(5) which requires that dispatchers serve at least one half of their period of ineligibility before their certification can be reinstated to obviate potential staffing issues. FRA is not adopting these proposed changes in the final rule. Whether a dispatcher has received ''adequate remedial training'' is a determination that is specific to the facts of each particular case. Railroads should be given latitude to make such determinations, and thus, they should not be constrained by a more specific definition. With respect to paragraph (d)(5), FRA takes the position that if a dispatcher commits a violation serious enough to warrant revocation, that person should have to serve at least one-half of the prescribed revocation period. FRA does not find NRC's reasoning convincing as railroads should not be sacrificing safety to alleviate staffing concerns. Furthermore, parts 240 and 242 have similar provisions to paragraph (d)(5) [117] and FRA is unaware of these provisions causing staffing issues for railroads with respect to locomotive engineers and conductors, thus, it seems unlikely that this would lead to staffing issues for dispatchers.

Section 245.307 Process for Revoking Certification

This section covers the procedures railroads must follow to revoke a dispatcher's certification. SEPTA expressed concerns that this section could put dispatchers in uncomfortable situations, as they could be intimidated or worry about retaliation for cross-examining a senior level manager. If a dispatcher is concerned about being put in such a scenario, they are welcome to have a designated representative, as provided for in paragraph (d)(5) of this section. This designated representative can, but does not have to, be a labor union representative, or an attorney. Also, it is unclear what SEPTA would propose as an alternative as FRA cannot prohibit dispatchers from cross-examining the railroad's witnesses. Such a process would be fundamentally unfair to dispatchers and is untenable. Thus, FRA does not see a need to change this section based on SEPTA's comment.

Paragraph (b)(4) of this section in the NPRM provided that no later than the start of the hearing, the railroad shall provide the dispatcher with a copy of the written information and a list of witnesses the railroad will present at the hearing. TTD and ATDA submitted similar comments criticizing this paragraph, contending it does not allow for sufficient time for a dispatcher and their representative to prepare a defense. TTD requested that the language be revised so that the dispatcher and their labor representative, if applicable, ''receive a copy of all information and a list of witnesses sufficiently in advance of the hearing in order to properly develop a defense.'' [118] ATDA requested that this information be provided to the dispatcher no later than 96 hours before the hearing.

After considering these comments, FRA is amending paragraph (b)(4) to require railroads to provide dispatchers

[115] FRA–2022–0019–0041.

[116] FRA–2022–0019–0038.

[117] 49 CFR 240.117(i)(5) and 242.405(c)(5).

[118] FRA–2022–0019–0037.

with a copy of the written information and the list of witnesses it will present at the hearing at least 72 hours before the start of the hearing. FRA thinks this will provide the dispatcher and their representative with sufficient time to prepare a proper defense. However, if an applicable collective bargaining agreement allows for railroads to provide this information less than 72 hours before the start of the hearing, the railroad will be in compliance with this requirement as long as it satisfies the requirements of the applicable collective bargaining agreement.

Paragraph (b)(4) in the NPRM also stated that if an employee of the railroad provided information that will be presented at the hearing, the railroad must make that employee available for examination at the hearing. TTD and ATDA stated that any person that the railroad was relying upon to support its allegations against the dispatcher should be present at the hearing. While the labor organizations may want this language to cover not just employees, but all persons, FRA recognizes that railroads are limited in their ability to compel a non-employee to testify at such hearings and is declining to make this change.

FRA is adding language to note that this sentence applies ''notwithstanding the terms of an applicable collective bargaining agreement.'' FRA wanted to make it clear in the rule text that all railroads must make employees available for examination at the hearing if those employees provided information that will be used by the railroad at the hearing, regardless of whether an applicable collective bargaining agreement addresses this issue.

FRA is also making some other changes to this section, from what appeared in the proposed rule, to align with parts 240 and 242. Paragraph (b)(5) of this section states that after the hearing, the railroad must determine, based on the hearing record, whether certificate revocation is warranted. FRA is adding language from 49 CFR 240.307(b)(5) and 242.407(b)(5) to this paragraph noting that the railroad must also state the basis for its decision which is discussed in more detail in paragraph (e). Similarly, FRA added language to paragraph (d)(8) stating that while a railroad can consolidate a revocation hearing with a disciplinary hearing, it must still make a separate finding regarding revocation, and it must ensure that the railroad official making that determination is not the investigating officer. This new language, found in 49 CFR 240.307(e) and 242.407(e), clarifies for railroads that the requirements in paragraph (d)(1) of this section still apply when the revocation hearing is consolidated with a disciplinary hearing.

Next, FRA is revising paragraph (e)(2)(iv) of this section to change the references to an ''employee'' in the NPRM to a ''dispatcher'' in this final rule since not all dispatchers are employees of the certifying railroad.

Paragraph (g) of this section requires a railroad to revoke a dispatcher's certification if it discovers that another railroad has revoked that person's dispatcher certification. The revocation period shall coincide with the revocation period of the railroad that initially revoked the dispatcher's certification. NRC commented that enforcing this provision may be difficult for FRA as it will depend largely on individual collective bargaining agreements. However, NRC's comment is misguided as collective bargaining agreements do not supersede FRA regulations with respect to this issue. If Railroad A revokes a dispatcher's certification, Railroad B would be required to revoke the dispatcher's certification upon learning of Railroad A's revocation and Railroad B would not need to provide the dispatcher with a hearing since one was already provided by Railroad A.[119] Under this paragraph, there is nothing in a collective bargaining agreement that could prevent Railroad B from taking these actions.

Finally, FRA added language that was not in the NPRM to clarify what is required under paragraph (j) of this section. Paragraph (j) requires railroads to keep records of evidence that leads the railroad to not revoke a dispatcher's certification in accordance with paragraph (h) or (i). In this final rule, FRA is acknowledging that this requirement does not just apply if this information comes to light during a revocation hearing. Railroads must also retain this evidence if it becomes available before the railroad suspends the dispatcher or before the revocation hearing is convened. The language FRA added to this final rule mirrors language found in 49 CFR 240.307(j) and 242.407(j). Additionally, FRA changed the ''and'' at the end of paragraph (j)(1) in the NPRM to an ''or'' since only paragraph (j)(1) *or* (j)(2) will apply to each individual railroad.

[119] Under § 245.213(c)(1), once a dispatcher's certification is suspended or revoked by one railroad, they must immediately notify all other railroads with which they have a dispatcher certificate.

Section 245.403 Petition Requirements

This section states the requirements a dispatcher must satisfy to submit a petition to the CRB. Paragraph (b)(7) of this section notes that a petition must include all written documents in the dispatcher's possession or reasonably available to the dispatcher that document the railroad's decision to revoke certification. IBEW commented that FRA should add language to this section requiring railroads to produce all records requested by the dispatcher. FRA does not think such a change is necessary because IBEW's concern is already addressed by § 245.405(b) which requires a railroad to supplement the record with any relevant documents, in its possession, that were not provided by the dispatcher. This ensures that the CRB will have a complete record when the case is ready for their review.

Section 245.407 Request for a Hearing

This section discusses the process for requesting an administrative hearing after a party has been adversely affected by a CRB decision. Paragraph (b) provides that an adversely affected party must file their request for a hearing within 20 days of service of the CRB's decision. TTD, ATDA, and IBEW asked FRA to increase this filing period from 20 days to 60 days. Their rationale for this position is that 20 days is inadequate for the aggrieved party to confer with their representative, determine the best course of action, and then compile the information required in paragraph (c) to complete a request. FRA disagrees with the labor organizations that 20 days is inadequate. The requirements in paragraph (c) to make a valid hearing request are minimal and are similar to the requirements found in § 245.403(b) for filing a petition with the CRB. Thus, if the dispatcher is the aggrieved party, most of the information they need for their hearing request can be found in their CRB petition that they already drafted. FRA does not see any major hindrance that would prevent a dispatcher or railroad from being able to complete this request within the 20 days currently allotted. Moreover, this 20-day deadline has been in effect for over a decade for conductors and for over 30 years for locomotive engineers. FRA is unaware of any major issues parties have had with meeting this deadline and does not see a justification for changing this deadline for dispatchers.

Appendices

FRA made minor revisions to Appendix A from what appeared in the proposed rule. Appendix A discusses

the procedures that a person seeking certification or recertification should follow to furnish a railroad with their motor vehicle driving records. In paragraph (2), FRA added language noting that the information in a candidate's motor vehicle driving records that the railroad should consider is described in § 245.111(m). FRA also added language to paragraph (4) to clarify that under § 245.301, a railroad is only required to provide a certification candidate with a copy of their motor vehicle driving records if the records contain information that could be the basis for denying certification. If no such adverse information exists, then the railroad does not have to provide the certification candidate with a copy of these records.

V. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094

This final rule is not a significant regulatory action within the meaning of Executive Order 12866 as amended by Executive Order 14094, Modernizing Regulatory Review. Details on the estimated costs of this final rule can be found in the RIA, which FRA has prepared and placed in the docket (FRA–2022–0019).

FRA is issuing regulations establishing a formal certification process for railroad dispatchers. As part of that process, railroads will be required to develop a program for training current and prospective dispatchers, documenting and verifying that the holder of the certificate has achieved certain training and proficiency, and creating a record of safety compliance infractions that other railroads can review when considering individuals for certification. This final rule will ensure that dispatchers are properly trained, are qualified to perform their duties, and meet Federal safety standards. Additionally, this regulation is expected to improve railroad safety by reducing the rate of accidents/incidents.

The RIA presents estimates of the costs likely to occur over the first 10 years of the final rule. The analysis includes estimates of costs associated with development of certification programs, initial and periodic training, knowledge testing, and monitoring of operational performance. Additionally, costs are estimated for vision and hearing tests, review of certification determinations made by other railroads, and Government administrative costs.

FRA estimated 10-year costs of $5.4 million discounted at 7 percent. The annualized cost will be approximately $0.8 million discounted at 7 percent. The following table shows the estimated 10-year costs of the final rule.

TOTAL 10-YEAR DISCOUNTED COSTS

[2020 Dollars]

Category	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Development of Certification Program	982,914	1,010,875	139,945	118,505
Certification Eligibility Requirements	55,345	61,945	7,880	7,262
Recertification Eligibility Requirements	65,831	83,877	9,373	9,833
Training	707,334	812,820	100,708	95,287
Knowledge Testing	233,988	281,581	33,315	33,010
Vision and Hearing	1,586,913	1,909,692	225,941	223,874
Monitoring Operational Performance	256,017	305,956	36,451	35,867
Railroad Oversight Responsibilities	267,530	326,714	38,090	38,301
Certification Card	26,832	32,289	3,820	3,785
Petitions and Hearings	38,667	46,209	5,505	5,417
Government Administrative Cost	1,192,651	1,342,668	169,807	157,402
Total	5,414,022	6,214,626	770,835	728,544

The primary benefit of this final rule is that it will ensure that railroads properly train and monitor dispatcher performance to reduce the risk of accidents caused by dispatcher error. This rule will allow railroads to revoke certification of dispatchers who make serious safety-related violations. This includes failure to properly issue or apply a mandatory directive or improperly authorizing a train or on-track equipment to proceed through a protected track segment.

This rule is expected to reduce the likelihood of an accident occurring due to dispatcher error. FRA has analyzed accidents over the past five years to categorize those where dispatcher training and certification would have impacted the accident. FRA estimated that this rule will prevent 30 percent of accidents that were caused or likely caused by the dispatcher. FRA estimated that this rule will prevent 10 percent of accidents where a dispatcher may have contributed to the accident.

The following table shows the estimated 10-year benefits of the proposed rule. The total 10-year estimated benefits would be $0.6 million (PV, 7 percent) and annualized benefits would be $0.1 million (PV, 7 percent).Total 10-Year Discounted Benefits (2020 Dollars)

TOTAL 10-YEAR DISCOUNTED BENEFITS

[2020 Dollars]

Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
620,283	725,177	88,314	85,013

FRA has quantified the monetary impact from accidents reported on FRA accident forms. However, some accident costs are not required to be reported on FRA accident forms (*e.g.,* environmental impact). For example, the cost of property damage represents a portion of the total cost of train accidents, such as, the cost of direct labor and damage to on-track equipment, track, track structures, and roadbed. Other direct accident costs, such as accident clean up, third party property damage, lost lading, environmental damage, loss of economic activity to the community, and train delays are not included in FRA's accident/incident reportable damages from the railroads. That impact may account for additional benefits not quantified in this analysis. If these costs not covered by FRA data were realized, accidents affected by this rulemaking could have much greater economic impact than the quantitative benefit estimates provided here.

In addition, the hiring and transfer of dispatchers will be more efficient with this rule. When dispatchers transfer between railroads, the common regulatory elements between programs will make the hiring process more seamless. When railroads certify a dispatcher that has been certified by a previous railroad, the certifying railroad will be able to verify components and dates of certification requirements. This will allow them to certify dispatchers on their own railroad using information from the previous railroad, as well as specific requirements for their railroad.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 [120] and Executive Order 13272 [121] require agency review of proposed and final rules to assess their impacts on small entities. FRA prepared this Final Regulatory Flexible Analysis to evaluate the impact of the final rule on small entities and describe the effort to minimize the adverse impact. The estimated cost on small entities is not significant, as it represents less than one percent of average annual revenue of affected entities. Accordingly, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the Need for, and Objectives of, the Rule

FRA perceives the potential for dispatcher error to cause accidents, and an existing lack of means to evaluate and address this risk. Railroads' dispatcher training programs may not currently be covering all aspects of a dispatcher's job responsibility. Additionally, railroads may not be testing dispatchers and ensuring that their knowledge is maintained continuously.

DOT's general authority states, in relevant part, that the Secretary ''as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' [122] The Secretary delegated this authority to the Federal Railroad Administrator.[123] The RSIA required the Secretary to submit a report to Congress addressing whether certification of certain crafts or classes of railroad employees or contractors was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety. If the Secretary determined certification of certain crafts or classes was necessary to meet these goals, Congress also authorized the Secretary to promulgate regulations requiring certification. In the report to Congress, the Secretary noted that dispatchers, along with signal repair employees, were the most viable candidates for certification.

This final rule will require railroads to develop a dispatcher certification program and will ensure that railroads examine railroad safety with respect to dispatchers. Specifically, railroads will be required to ensure that the dispatchers they certify have the requisite knowledge, skills, safety record, and abilities to safely perform as a dispatcher. In addition, this rule requires railroads to have formal processes for revoking a dispatcher's certification if the dispatcher commits certain safety violations. If FRA did not issue this final rule, railroads would be free to hire and train dispatchers as they see fit and they would not be required to have a formal mechanism for removing dispatchers who commit safety violations from service.

2. Significant Issues Raised by Public Comments

FRA received several comments related to the costs of the proposed rule. ASLRRA and AAR submitted comments related to the proposed rule. Comments were received from ASLRRA relating to the cost estimates for developing the certification programs, petitions and hearings, and annual monitoring. FRA has revised costs for developing certification programs, estimating 550 hours for ASLRRA to develop a model or template program, as suggested by ASLRRA in their comment. Additionally, FRA has increased the time for individual railroads to develop their plan based on the template. The estimated time per railroad has been increased to 15 hours (from 8 hours in the RIA for the proposed rule).

Further, FRA has revised the cost for petitions and hearings, adding additional job categories and slightly increasing the time estimated per petition and hearing.

3. Response to Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration

FRA did not receive any comments from the Small Business Administration.

4. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 1,500 employees, a ''commuter rail system'' with annual receipts of less than $47.0 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than $34.0 million.[124]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a proposed statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR part 1201, General

[120] 5 U.S.C. 601 *et seq.*

[121] 67 FR 53461 (Aug. 16, 2002).

[122] 49 U.S.C. 20103.

[123] 49 CFR 1.89(a).

[124] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes, March 27, 2023. *https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

Instruction 1–1, which is $20 million or less in inflation-adjusted annual revenues,[125] and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[126] FRA is using this definition for the final rule.

When shaping the rule, FRA considered the impact that the rule would have on small entities. FRA has provided additional time for Class III railroads to comply with the final rule as compared to Class I railroads.

The final rule is applicable to all railroads, although only railroads with a dispatching function will be affected. FRA estimates there are 768 Class III railroads, of which 734 operate on the general system. These railroads are of varying size, with approximately 250 Class III railroads belonging to larger holding companies. FRA estimates that 140 Class III railroads have a dispatching function and therefore will be affected by this final rule.

5. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

The final rule requires Class III railroads to develop and implement a dispatcher certification program. This includes certifying and recertifying dispatchers, vision and hearing tests, training, knowledge testing, and monitoring operational performance.

The following table shows the annualized costs for all provisions of the final rule. The total annualized cost for all Class III railroads is $143,612 (PV, 7 percent).

ANNUALIZED COSTS FOR CLASS III RAILROADS

Category	Annualized 7% ($)
Development of Certification Program	37,864
Certification Eligibility Requirements	1,970
Recertification Eligibility Requirements	2,343
Training	25,177
Knowledge Testing	8,329
Vision and Hearing	56,485
Monitoring Operational Performance	9,113
Certification Card	955
Petitions and Hearings	1,376
Total	143,612

The industry trade organization representing small railroads, ASLRRA, reports the average freight revenue per Class III railroad is $4.75 million.[127] The following table summarizes the average annual cost and revenue for Class III railroads.

ANNUAL CLASS III RAILROADS' COST AND REVENUE

Total costs for all Class III railroads, annualized 7 percent ($)	Number of Class III railroads impacted by final rule	Average annual cost per Class III railroad ($)	Average Class III railroad annual revenue ($)	Average annual cost as percent of revenue
A	b	c = a ÷ b	D	e = c ÷ d
143,612	140	1,026	4,750,000	0.02%

The estimated average annual cost for a Class III railroad is $1,026. This represents a small percentage (0.02 percent) of the average annual revenue for a Class III railroad.

6. A Description of the Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities

This final rule requires railroads to develop a dispatcher certification program. Small railroads may use a template of a certification program developed by ALSRRA to comply with the final rule. Also, if a holding company owns several small railroads, it can submit a single certification program that covers all of the small railroads it owns. Therefore, the burden on small entities is mostly for certifying dispatchers. Many small railroads contract dispatching service to a third party. Dispatchers will be required to be certified by each railroad that they dispatch trains for, but the contractor may be involved in the process which would lessen the burden on individual short line railroads.

FRA has allowed Class III railroads additional time to develop their certification programs. Class III railroads will have 480 days after the effective date of the final rule to submit a certification program, whereas Class I railroads must submit a plan within 240 days. FRA will also not require Class III railroads to conduct annual reporting as required by § 245.215 Railroad Oversight Responsibilities.

C. Paperwork Reduction Act

The information collection requirements for part 245 are being submitted for approval to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.[128] This submission reflects adjustments in response to comments on program development costs discussed above. These changes impacted the paperwork burden under §§ 245.101 and 245.103. The adjustments increased the burden from 3,819 hours to 3,996 hours since the NPRM publication. This table contains new information collection requirements, and the estimated time to fulfill each requirement is as follows:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Wage rate	Total cost equivalent
		(A)	(B)	(C) = A * B	(D) [1]	(E) = C * D
245.9—Waivers—Petitions	203 railroads	.33 petitions	3 hours	1.00	$77.44	$77.44

[125] The Class III railroad revenue threshold is $46.3 million or less, for 2022. *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-C/part-1201.*

[126] *See* 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

[127] American Short Line and Regional Railroad Association, *Short Line and Regional Railroad Facts and Figures, p. 10 (2017 pamphlet).* Railroads' Cost and Revenue

[128] 44 U.S.C. 3501 *et seq.*

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
245.101/.103—Certification program required and FRA review of certification program—Development of certification program in accordance with this Part and procedures contained under § 245.107—Railroads with Current Dispatching Operations and New Dispatching Railroads (Note: Each certification program includes procedure requirements under § 245.111 through § 245.121.).	203 railroads + ASLRRA and holding companies.	66 plans (14 Class I and commuter railroads plans + 0.33 generic program developed by ASLRRA and holding companies plans + 51.67 Class II and III railroads plans).	120 hours + 550 hours + 15 hours.	2,636.55	115.24	303,836.02
245.103(d)(1) Dispatcher certification submission—Copies of the program provided to the president of each rail labor organization (RLO) that represents the railroad's dispatchers and to all of the railroad's dispatchers that are subject to this part.	203 railroads	3 copies	15 minutes	.75	77.44	58.08
—(d)(2) Affirmative statements that the railroad has provided a copy of the program to RLOs and the railroad's dispatchers.	203 railroads	3 affirmative statements	15 minutes	.75	77.44	58.08
—(e) Comment Period—Comments on a railroad's program by any designated representative of dispatchers subject to this part or any directly affected person who does not have a designated representative.	203 railroads	12 comments	4 hours	48.00	77.44	3,717.12
—(g) Material Modifications of FRA-approved program—Railroad to submit a description of how it intends to modify the program and a copy of the modified program to FRA.	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					
—(h) Resubmission—Railroad can resubmit its program or material modification after addressing all of the deficiencies noted by FRA and the resubmission must conform with the procedures and requirements contained in § 245.107.	203 railroads	3.67 revised plans (Class I and commuter railroads).	20 hours	73.40	77.44	5,684.10
—(i) Rescinding Prior Approval of Program—Railroad to resubmit its certification program and the program must conform with the procedures and requirements contained in § 245.107.	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					
245.105(c)(1) and (d)(1)—Implementation schedule for certification programs—Designation of certified dispatcher.	203 railroads	522 designated dispatchers.	5 minutes	43.50	77.44	3,368.64

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(c)(2) and (d)(2) Issue a certificate that complies with § 245.207 to each person that it designates.	203 railroads	522 issued certificate cards.	3 minutes	26.10	77.44	2,021.18
—(f) Written requests for delayed certification—Railroad may wait to recertify the person making the request until the end of the three-year period after FRA has approved the railroad's certification program.	FRA anticipates zero submissions.					
—(g) Testing and evaluation—Railroad shall only certify or recertify a person as a dispatcher if that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.	The paperwork burden for testing and evaluation is included in the economic burden and the burden for certificates is included under § 245.105.					
245.107—Requirements for Certification Programs—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data.	The paperwork requirements described in this section are accounted for throughout this table.					
245.109(a)—Determinations required for certification and recertification—Eligibility requirements.	The paperwork burden for this requirement is covered under § 245.111 through § 245.121 and § 245.303.					
—(b) Person entering into an agreement that results in a railroad obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 245.111 or § 245.113.	As a condition of employment, dispatchers will sign an agreement upon being hired. There is no paperwork burden since this is the usual and customary procedure.					
245.111(a) through (c)—Prior safety conduct as motor vehicle operator—Eligibility requirements of this section involving prior conduct as a motor vehicle operator.	203 railroads	522 motor vehicle records	5 minutes	43.50	77.44	3,368.64
—(e) If driver information is not obtained as required pursuant to paragraph (g) of this section, that person or the railroad certifying or recertifying that person may petition for a waiver in accordance with the provisions of part 211 of this chapter.	203 railroads	2 waivers	2 hours	4.00	77.44	309.76
—(f) Individual's duty—Consent to make information concerning driving record available to that railroad.	This is usual and customary procedure. The consent form is signed at the time of hiring to make driving information available to the railroad.					
—(g) and (h) Request to obtain driver's license information from licensing agency.	203 railroads	522 written requests	5 minutes	43.50	59.00	2,566.50

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(i) Requests for additional information from licensing agency.	The paperwork burden for this requirement is included under § 242.111(g) and (h).					
—(j) Notification to railroad by persons of never having a license.	203 railroads	2 notices	10 minutes	.33	77.44	25.56
—(k) Report of motor vehicle incidents described in paragraphs (m)(1) and (2) of this section to the certifying railroad within 48 hours.	203 railroads	10 self-reports	10 minutes	1.67	77.44	129.32
—(l) and (m) Evaluation of person's driving record by railroad.	203 railroads	522 motor vehicle record evaluations.	5 minutes	43.50	71.89	3,127.22
—(n)(1) DAC referral by railroad after report of driving drug/alcohol incident.	203 railroads	9 DAC referrals	5 minutes	.75	115.24	86.43
—(n)(2) DAC request and supply by persons of prior counseling or treatment.	203 railroads	1 request and supplied record.	30 minutes	.50	115.24	57.62
—(n)(3) Conditional certifications recommended by DAC.	203 railroads	3 conditional certification recommendations.	4 hours	12.00	115.24	1,382.88
245.113(b)—Prior safety conduct with other railroads—Certification candidate has not been employed or certified by any other railroad in the previous five years, they do not have to submit a request in accordance with paragraph (c) of this section, but they must notify the railroad of this fact in accordance with procedures established by the railroad in its certification program.	This is usual and customary procedure and, therefore, there is no paperwork burden.					
—(c) Person seeking certification or recertification under this part shall submit a written request to each railroad that employed or certified the person within the previous five years.	203 railroads	3.33 requests	15 minutes	.83	77.44	64.28
—(e) and (g) Railroad shall provide the information requested to the railroad designated in the written request.	203 railroads	3.33 records	15 minutes	.83	77.44	64.28
—(f) An explanation shall state why the railroad cannot provide the information within the requested time frame or cannot provide the requested information.	FRA anticipates zero submissions.					
245.115(a)—Substance abuse disorders and alcohol drug rules compliance—Determination that person meets eligibility requirements.	203 railroads	459 determinations	2 minutes	15.30	77.40	1,184.22
—(b) Written documents from DAC that person is not affected by a substance abuse disorder.	203 railroads	20 filed documents	30 minutes	10.00	115.24	1,152.40

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(c)(3) Fitness requirement—Voluntary self-referral by dispatcher for substance abuse counseling or treatment under the policy required by § 219.1001(b)(1) of this chapter.	203 railroads	1 self-referral	10 minutes	.17	115.24	19.59
—(d)(1) and (2) Prior alcohol/drug conduct; Federal rule compliance.	203 railroads	522 certification reviews	10 minutes	87.00	115.24	10,025.88
—(d)(3)(i) Written determination that most recent incident has occurred.	203 railroads	8 written determinations	1 hour	8.00	115.24	921.92
—(d)(3)(ii) Notification to person that recertification has been denied.	203 railroads	8 notifications	30 minutes	4.00	77.44	309.76
—(d)(4) Persons/dispatchers waiving investigation/de-certifications.	203 railroads	5 waived investigations	10 minutes	.83	77.44	64.28
245.117(a) through (c)—Visual acuity—Determination vision standards met.	203 railroads	522 records	2 minutes	17.40	71.89	1,250.89
—(d)(1) Request for retest and another medical evaluation.	203 railroads	5 records	2 minutes	.17	71.89	12.22
—(d)(2) Railroad to provide a copy of this part to medical examiner.	203 railroads	522 copies	5 minutes	43.50	71.89	3,127.22
—(d)(3) Consultations by medical examiners with railroad officer and issue of conditional certification.	203 railroads	5 consultations + conditional certifications.	30 minutes + 10 minutes	3.33	71.89	239.39
—(g) Notification by certified dispatcher of deterioration of vision.	203 railroads	1 notification	10 minutes	.17	71.89	12.22
245.118(a) through (c)—Hearing acuity—Determination hearing standards met.	203 railroads	522 medical records	2 minutes	17.40	71.89	1,250.89
—(d)(1) Request for retest and another medical evaluation.	203 railroads	5 records	2 minutes	.17	71.89	12.22
—(d)(2) Railroad to provide a copy of this part to medical examiner.	203 railroads	522 copies	5 minutes	43.50	71.89	3,127.22
—(d)(3) Consultations by medical examiners with railroad officer and issue of conditional certification.	203 railroads	5 consultations + conditional certifications.	30 minutes + 10 minutes	3.33	71.89	239.39
—(g) Notification by certified dispatcher of deterioration of hearing.	203 railroads	1 notification	10 minutes	.17	71.89	12.22
245.119(b)—Training requirements—A railroad's election for the training of dispatchers shall be stated in its certification program.	The paperwork burden for this requirement is covered under §§ 245.101 and 245.103.					
—(c) Initial training program for persons not previously certified as dispatchers.	203 railroads	71 training programs	3 hours	213.00	115.24	24,546.12
—(c)(3) Modification to training program when new safety-related railroad laws, regulations, etc. are introduced into the workplace.	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(d) Relevant information or materials on safety or other rules made available to certification candidates.	The paperwork burden for this requirement is covered under §§ 245.101 and 245.103.					
—(e) and (f) Completion of initial training program by a person being certified as a dispatcher—Written documentation showing completed training program that complies with paragraph (c) of this section.	203 railroads	67 written documents or records.	10 minutes	11.17	77.44	865.00
—(e)(3) Employee consultation with qualified supervisory employee if given written test to demonstrate knowledge of physical characteristics of any assigned territory.	The paperwork burden for this requirement is covered under § 245.119.					
—(g) Certification program is submitted in accordance with the procedures and requirements described in § 245.107.	The paperwork burden for this requirement is covered under §§ 245.101 and 245.103.					
—(h) Familiarization training for dispatcher of acquiring railroad from selling company/railroad prior to commencement of new operation.	FRA anticipates zero submissions.					
—(i) Continuing education of certified dispatchers.	203 railroads	522 training records	15 minutes	130.50	71.89	9,381.65
245.120—Requirements for territorial qualification—Determining eligibility.	The paperwork burden for this requirement is covered under § 245.119.					
—(b) Notification by persons who do not meet territorial qualification.	The paperwork burden for this requirement is covered under § 245.119.					
245.121(a) through (c)—Knowledge testing—Determining eligibility.	203 railroads	522 test records	5 minutes	43.50	77.44	3,368.64
—(d) Reexamination of the failed test.	203 railroads	2 examination records	5 minutes	.17	77.44	13.16
245.123(c)—Monitoring operational performance—Unannounced compliance tests—Retention of a written record.	203 railroads	1,822 records	2 minutes	60.73	77.44	4,702.93
245.125—Certification determinations made by other railroads.	203 railroads	3.33 determinations	30 minutes	1.67	77.44	129.32
245.203(b)—Retaining information supporting determination—Records.	203 railroads	522 record retentions	15 minutes	130.50	77.44	10,105.92
—(g) Amended electronic records.	203 railroads	1 amended record	15 minutes	.25	77.44	19.36
245.205—List of certified dispatchers and recordkeeping..	The paperwork requirement for this burden is covered under § 245.105(c)(1) and (d)(1).					
245.207(a) through (e)—Certificate requirements.	The paperwork requirement for this burden is covered under § 245.105(c)(2) and (d)(2).					
—(f) and (g) Replacement of certificates.	203 railroads	15 replacement certificates.	5 minutes	1.25	77.44	96.80

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(h) Notification by dispatchers that railroad request to serve exceeds certification.	203 railroads	30 notifications	30 seconds	.25	71.89	17.97
245.213(a) through (h)—Multiple Certificates—Notification of denial, suspension, or revocation of certification by individuals holding multiple certifications.	203 railroads	3 notifications	10 minutes	.50	77.44	38.72
—(i) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified in multiple crafts.	The paperwork requirement for this burden is covered under § 245.105.					
245.215—Railroad oversight responsibilities—Review and analysis of administration of certification program.	203 railroads	17.33 annual reviews and analyses.	8 hours	138.64	115.24	15,976.87
—(d) Report of findings and conclusions reached during annual review by railroad (if requested in writing by FRA, RLO president, or certified dispatcher not represented by labor organization) review and analysis effort..	203 railroads	2 reports	4 hours	8.00	115.24	921.92
245.301(a)—Denial of certification—Notification to candidate of information that forms basis for denying certification and candidate response.	203 railroads	2 notices + 1 response	1 hour	3.00	77.44	232.32
—(b) Denial Decision Requirements—Written notification of denial of certification by railroad to candidate.	203 railroads	2 notifications	1 hour	2.00	77.44	154.88
245.307(b)(1) through (4)—Process for revoking certification—Immediate suspension of dispatcher's certification.	203 railroads	5 suspended certification letters and documentations.	30 minutes	2.50	77.44	193.60
—(b)(5) and (6) Determinations based on the record of the hearing, whether revocation of the certification is warranted.	The paperwork requirement for this burden is covered under § 245.307(e).					
—(b)(7) Retention of record of the hearing for three years after the date the decision is rendered.	203 railroads	5 records	15 minutes	1.25	77.44	96.80
—(d)(9) Hearing Procedures—Written waiver of right to hearing.	203 railroads	1 written waiver	10 minutes	.17	59.00	10.03
—(e) Revocation Decision Requirements—Written decisions by railroad official.	203 railroads	5 written decisions and service of decisions.	2 hours	10.00	115.24	1,152.40
—(g) Revocation of certification based on information that another railroad has done so.	203 railroads	1 revoked certification	10 minutes	.17	115.24	19.59

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(j) Placing relevant information in record if sufficient evidence meeting the criteria in paragraph (h) or (i) of this section becomes available.	The paperwork requirement for this burden is covered under § 245.307(b)(7).					
—(k) Good faith determination.	203 railroads	1 good faith determination	1 hour	1.00	77.44	77.44
Subpart E—Dispute Resolution Procedures—§ 245.401 through § 245.411.	The requirements under these provisions are exempted from the PRA under 5 CFR 1320.4(a)(2). Since these provisions pertain to an administrative action or investigation, there is no PRA burden associated with these requirements.					
Appendix A to Part 245—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data.	The paperwork requirements described in this appendix are accounted for throughout this table.					
Appendix B to Part 245—Medical Standards Guidelines.	The paperwork requirements described in this appendix are accounted for throughout this table.					
Totals [2]	203 railroads + ASLRRA and holding companies.	9,487 responses	N/A	3,996	N/A	425,087

[1] Throughout the tables in this document, the dollar equivalent cost is derived from the 2020 Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.
[2] Totals may not add due to rounding.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: 571–609–1285, or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: at 757–897–9908.

OMB is required to decide concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this document. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. The current OMB control number for this rule is 2130–0637.

D. Federalism Implications

Executive Order 13132, Federalism,[129] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, to the extent practicable and permitted by law, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 [130] prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Assessment

FRA has evaluated this final rule consistent with the National

[129] 64 FR 43255 (Aug. 10, 1999).

[130] 19 U.S.C. Ch. 13.

Environmental Policy Act [131] (NEPA), the Council of Environmental Quality's NEPA implementing regulations,[132] and FRA's NEPA implementing regulations [133] and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[134] Specifically, FRA has determined that this rule is categorically excluded from detailed environmental review.[135]

The main purpose of this rulemaking is to establish certification requirements for train dispatchers. This final rule would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[136] FRA has concluded that no such unusual circumstances exist with respect to this regulation and the final rule meets the requirements for categorical exclusion.[137]

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[138] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[139] Further, FRA reviewed this rule and found it consistent with Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.''

G. Environmental Justice

Executive Order 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All,'' which expands on Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires U.S. Department of Transportation (DOT) agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns. DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.[140] FRA has evaluated this final rule under Executive Orders 14096 and 12898 and DOT Order 5610.2C and has determined it will not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[141] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act [142] further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [143] FRA evaluated this final rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

J. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this rule in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. This rule would not have a substantial direct effect on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a Tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 245

Administrative practice and procedure, Dispatcher, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ For the reasons discussed in the preamble, FRA amends chapter II, subtitle B of title 49 of the Code of Federal Regulations, by adding part 245 to read as follows:

PART 245—QUALIFICATION AND CERTIFICATION OF DISPATCHERS

Sec.

Subpart A—General

245.1 Purpose and scope.
245.3 Application and responsibility for compliance.
245.5 Effect and construction.
245.7 Definitions.

[131] 42 U.S.C. 4321 *et seq.*

[132] 40 CFR parts 1500 through 1508.

[133] 23 CFR part 771.

[134] 40 CFR 1508.4.

[135] *See* 23 CFR 771.116(c)(15) (categorically excluding ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise'').

[136] 23 CFR 771.116(b).

[137] 23 CFR 771.116(c)(15).

[138] *See* 54 U.S.C. 306108.

[139] *See* DOT Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[140] Executive Order 14096 is not currently referenced in DOT Order 5610.2C.

[141] Public Law 104–4, 2 U.S.C. 1531.

[142] 2 U.S.C. 1532.

[143] 66 FR 28355 (May 22, 2001).

245.9 Waivers.
245.11 Penalties and consequences for noncompliance.

Subpart B—Program and Eligibility Requirements

245.101 Certification program required.
245.103 FRA review of certification programs.
245.105 Implementation schedule for certification programs.
245.107 Requirements for certification programs.
245.109 Determinations required for certification and recertification.
245.111 Prior safety conduct as motor vehicle operator.
245.113 Prior safety conduct with other railroads.
245.115 Substance abuse disorders and alcohol drug rules compliance.
245.117 Visual acuity.
245.118 Hearing acuity.
245.119 Training requirements.
245.120 Requirements for territorial qualification.
245.121 Knowledge testing.
245.123 Monitoring operational performance.
245.125 Certification determinations made by other railroads.

Subpart C—Administration of the Certification Program

245.201 Time limitations for certification.
245.203 Retaining information supporting determinations.
245.205 List of certified dispatchers and recordkeeping.
245.207 Certificate requirements.
245.213 Multiple certifications.
245.215 Railroad oversight responsibilities.

Subpart D—Denial and Revocation of Certification

245.301 Process for denying certification.
245.303 Criteria for revoking certification.
245.305 Periods of ineligibility.
245.307 Process for revoking certification.

Subpart E—Dispute Resolution Procedures

245.401 Review board established.
245.403 Petition requirements.
245.405 Processing certification review petitions.
245.407 Request for a hearing.
245.409 Hearings.
245.411 Appeals.

Appendix A to Part 245—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

Appendix B to Part 245—Medical Standards Guidelines

Authority: 49 U.S.C. 20103, 20107, 20162, 21301, 21304, 21311; 28 U.S.C. 2461 note; 49 CFR 1.89; and Pub. L. 110–432, sec. 402, 122 Stat. 4884.

Subpart A—General

§ 245.1 Purpose and scope.

(a) The purpose of this part is to ensure that only those persons who meet minimum Federal safety standards serve as dispatchers, to reduce the rate and number of accidents and incidents, and to improve railroad safety.

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification, and monitoring of all dispatchers to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements consistent with this part.

(c) The dispatcher certification requirements prescribed in this part apply to any person who meets the definition of dispatcher contained in § 245.7, regardless of the fact that the person may have a job classification title other than that of dispatcher.

§ 245.3 Application and responsibility for compliance.

(a) This part applies to all railroads except:

(1) Railroads that do not have any dispatch (as defined in § 245.7) tasks performed either by dispatchers employed by the railroad or employed by a contractor or subcontractor;

(2) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* plant railroads, as defined in § 245.7);

(3) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 245.7; or

(4) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, as defined in § 245.7, who performs any function required by this part must perform that function in accordance with this part.

§ 245.5 Effect and construction.

(a) FRA does not intend, by use of the term dispatcher in this part, to alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying a person who dispatches a train.

(b) FRA does not intend, by issuance of the regulations in this part, to alter the authority of a railroad to initiate disciplinary sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(c) Except as provided in § 245.213, nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(d) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

§ 245.7 Definitions.

As used in this part:

Administrator means the Administrator of the FRA or the Administrator's delegate.

Alcohol means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

Blocking device means a method of control that either prohibits the operation of a switch or signal or restricts access to a section of track.

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301 through 1316).

Dispatch means:

(1) To perform a function that would be classified as a duty of a ''dispatching service employee,'' as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), if the function were to be performed in the United States. The term dispatch includes, but is not limited to, by the use of an electrical or mechanical device:

(i) Controlling the movement of a train or other on-track equipment by the issuance of a written or verbal authority or permission affecting a railroad operation, or by establishing a route through the use of a railroad signal or train control system but not merely by aligning or realigning a switch; or

(ii) Controlling the occupancy of a track by a roadway worker or stationary on-track equipment, or both; or

(iii) Issuing a mandatory directive, including, but not limited to, speed restrictions, highway-rail grade crossing protections, or those which establish working limits for roadway workers.

(2) The term *dispatch* does not include the actions of personnel in the field:

(i) Effecting implementation of a written or verbal authority or permission for a railroad operation, including an authority for working limits to a roadway worker (*e.g.,*

initiating an interlocking timing device, authorizing a train to enter working limits); or

(ii) Operating a function of a signal system designed for use by those personnel; or

(iii) Sorting and grouping rail cars inside a railroad yard to assemble or disassemble a train.

Dispatcher means any individual who dispatches.

Dispatcher Pilot means a dispatcher qualified on assigned territory, tasked with overseeing a non-qualified employee who has not successfully completed all instruction, training and examination programs for the physical characteristics of the territory or position.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

Drug and alcohol counselor (DAC) means a person who meets the credentialing and qualification requirements of a ''Substance Abuse Professional'' (SAP), as provided in 49 CFR part 40.

File, filed, and *filing* mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail, the date mailing was completed.

FRA means the Federal Railroad Administration.

FRA representative means the FRA Associate Administrator for Railroad Safety/Chief Safety Officer and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified State railroad safety inspector acting under part 212 of this chapter.

Ineligible or *ineligibility* means that a person is legally disqualified from serving as a certified dispatcher. The term covers a number of circumstances in which a person may not serve as a certified dispatcher. Revocation of certification pursuant to § 245.307 and denial of certification pursuant to § 245.301 are two examples in which a person would be ineligible to serve as a dispatcher. A period of ineligibility may end when a condition or conditions are met, such as when a person meets the conditions to serve as a dispatcher following an alcohol or drug violation pursuant to § 245.115.

Knowingly means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

Main track means a track upon which the operation of trains is governed by one or more of the following methods of operation: Timetable; mandatory directive; signal indication; or any form of absolute or manual block system.

Mandatory directive means any movement authority or speed restriction that affects a railroad operation.

Medical examiner means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this part, the medical examiner owes a duty to make an honest and fully informed evaluation of the condition of an individual.

On-the-job training means job training that occurs in the workplace, *i.e.,* the employee learns the job while doing the job.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Physical characteristics means the actual track profile of and physical location for points within a specific yard or route that affect the movement of a locomotive or train. Physical characteristics includes *main track physical characteristics* (see definition of ''main track'' in this section) and other than main track physical characteristics.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Qualified means a person who has successfully completed all instruction, training and examination programs required by the employer, and the applicable parts of this chapter and that the person therefore may reasonably be expected to be proficient on all safety related tasks the person is assigned to perform.

Qualified instructor means a person who has demonstrated, pursuant to the railroad's written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary dispatching experience to effectively instruct in the field, and has the following qualifications:

(1) Is a certified dispatcher under this part; and

(2) Has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present; or

(3) In absence of concurrence provided in paragraph (2) of this definition, has a minimum of one year of service working as a dispatcher.

If a railroad does not have designated employee representation, then a person need not comply with paragraph (2) or (3) of this definition to be a *qualified instructor.*

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad officer means any supervisory employee of a railroad.

Roadway worker in charge (RWIC) means a roadway worker who is qualified under § 214.353 of this chapter to establish on-track safety for roadway work groups, and lone workers qualified

under § 214.347 of this chapter to establish on-track safety for themselves.

Serve or service, in the context of serving documents, has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. *See also* the definition of ''filing'' in this section.

Substance abuse disorder refers to a psychological or physical dependence on alcohol or a drug, or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is ''active'' within the meaning of this part if the person is currently using alcohol or other drugs, except under medical supervision consistent with the restrictions described in § 219.103 of this chapter or has failed to successfully complete primary treatment or successfully participate in aftercare as directed by a DAC or SAP.

Substance Abuse Professional (SAP) means a person who meets the qualifications of a substance abuse professional, as provided in 49 CFR part 40.

Territorial qualifications means possessing the necessary knowledge concerning a railroad's operating rules and timetable special instructions including familiarity with applicable *main track* and other than *main track physical characteristics* of the territory over which the locomotive or train movement will occur as well as the characteristics of the position to include, and not limited to, the operation and capabilities of dispatch control systems.

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

§ 245.9 Waivers.

(a) A person subject to a requirement of this part may petition FRA for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If FRA finds that a waiver of compliance is in the public interest and is consistent with railroad safety, FRA may grant the waiver subject to any conditions FRA deems necessary.

§ 245.11 Penalties and consequences for noncompliance.

(a) Any person (including a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, or lessee; or any independent contractor or subcontractor of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation. However, penalties may be assessed against individuals only for willful violations, and a penalty not to exceed the aggravated maximum civil monetary penalty per violation may be assessed, where:

(1) A grossly negligent violation, or a pattern of repeated violations, has created an imminent hazard of death or injury to persons; or

(2) A death or injury has occurred. *See* 49 CFR part 209, appendix A.

(b) Each day a violation continues constitutes a separate offense.

(c) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(d) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

(e) In addition to the enforcement methods referred to in paragraphs (a) through (d) of this section, FRA may address violations of this part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal rail safety laws.

(f) FRA's website at *https://railroads.dot.gov/* contains a schedule of civil penalty amounts used in connection with this part.

Subpart B—Program and Eligibility Requirements

§ 245.101 Certification program required.

(a) Each railroad subject to this part shall have a written dispatcher certification program.

(b) Each certification program shall include all of the following:

(1) A procedure for evaluating prior safety conduct as a motor vehicle operator that complies with the criteria established in § 245.111.

(2) A procedure for evaluating prior safety conduct as an employee or certified dispatcher with other railroads that complies with the criteria established in § 245.113.

(3) A procedure for evaluating potential substance abuse disorders and compliance with railroad alcohol and drug rules that complies with the criteria established in § 245.115.

(4) A procedure for evaluating visual and hearing acuity that complies with the criteria established in §§ 245.117 and 245.118.

(5) A procedure for training that complies with the criteria established in § 245.119.

(6) A procedure for knowledge testing that complies with the criteria established in § 245.121.

(7) A procedure for monitoring operational performance that complies with the criteria established in § 245.123.

§ 245.103 FRA review of certification programs.

(a) *Certification program submission schedule for railroads with current dispatching operations.* Each railroad with current dispatching operations, as of July 22, 2024, shall submit its dispatcher certification program to FRA, in accordance with the procedures and requirements contained in § 245.107, according to the following schedule:

(1) All Class I railroads (including the National Railroad Passenger Corporation) and railroads providing commuter service shall submit their programs to FRA no later than March 17, 2025.

(2) All Class II railroads and Class III railroads (including a switching and terminal or other railroad not otherwise classified) shall submit their programs to FRA no later than November 12, 2025.

(b) *Certification program submission for new dispatching railroads.* For each railroad that commences dispatching operations after July 22, 2024, the railroad shall submit its written dispatcher certification program to, and obtain approval from, FRA in accordance with the procedures and requirements contained in § 245.107, prior to commencing dispatching operations.

(c) *Method for submitting certification programs to FRA.* Railroads must submit their written certification programs and their requests for approval (described in § 245.107(a)) by emailing the documents to *FRADISPATCHCERTPROG@dot.gov.*

(d) *Notification requirements.* Each railroad that submits a program to FRA must:

(1) Simultaneously with its submission, provide a copy of the program and the request for approval (as described in § 245.107(a)) to the president of each labor organization that represents the railroad's dispatchers and to all of the railroad's dispatchers that are subject to this part; and

(2) Include in its submission to FRA, a statement affirming that the railroad has provided a copy of the program and the request for approval to the president of each labor organization that represents the railroad's dispatchers and to all of the railroad's dispatchers that are subject to this part, along with a list of the names and email addresses of each president of a labor organization who was provided a copy of the program.

(e) *Comment period.* Any designated representative of dispatchers subject to this part or any directly affected person who does not have a designated representative may comment on a railroad's program provided that:

(1) The comment is submitted no later than 60 days after the date the program was submitted to FRA;

(2) The comment includes a concise statement of the commenter's interest in the matter;

(3) The commenter affirms that a copy of the comment was provided to the railroad; and

(4) The comment was emailed to *FRADISPATCHCERTPROG@dot.gov.*

(f) *FRA review period.* Upon receipt of a program, FRA will commence a thorough review of the program to ensure that it satisfies all of the requirements under this part.

(1) If FRA determines that the program satisfies all of the requirements under this part, FRA will issue a letter notifying the railroad that its program has been approved. Such letter will typically be issued within 120 days of the date the program was submitted to FRA.

(2) If FRA determines that the program does not satisfy all of the requirements under this part, FRA will issue a letter notifying the railroad that its program has been disapproved. Such letter will typically be issued within 120 days of the date the program was submitted to FRA and will identify the deficiencies found in the program that must be corrected before the program can be approved. After addressing these deficiencies, railroads can resubmit their programs in accordance with paragraph (h) of this section.

(3) If a railroad does not receive an approval or disapproval letter from FRA within 120 days of the date the program was submitted to FRA, FRA's decision on the program will remain pending until such time that FRA issues a letter either approving or disapproving the program. A certification program is not approved until FRA issues a letter approving the program.

(g) *Material modifications.* A railroad that intends to make one or more material modifications to its FRA-approved program must submit a request for approval (as described in § 245.107(a)(3)) of how it intends to modify the program and a copy of the modified program.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The description of the modification and the modified program shall conform with the procedures and requirements contained in § 245.107.

(3) The process for submission and review of material modifications shall conform with paragraphs (c) through (f) of this section.

(4) A railroad shall not implement a material modification to its program until FRA issues its approval of the material modification in accordance with paragraph (f)(1) of this section.

(h) *Resubmissions.* If FRA disapproves a railroad's program or material modification, as described in paragraph (f)(2) of this section, the railroad can resubmit its program or material modification after addressing all of the deficiencies noted by FRA.

(1) The resubmission must conform with the procedures and requirements contained in § 245.107.

(2) The process for submission and review of resubmitted programs and resubmitted material modifications shall conform with paragraphs (c) through (f) of this section.

(3) The following deadlines apply to railroads that have their programs or material modifications disapproved by FRA:

(i) For a railroad that submitted its program pursuant to paragraph (a) of this section, the railroad must resubmit its program within 30 days of the date that FRA notified the railroad of the deficiencies in its program. If a railroad fails to resubmit its program within this timeframe and it continues its dispatching operations, FRA may consider such actions to be a failure to implement a program.

(ii) For a railroad that submitted its program pursuant to paragraph (b) of this section, there is no FRA-imposed deadline for resubmitting its program. However, pursuant to § 245.105(b), the railroad cannot begin dispatching operations until its program has been approved by FRA.

(iii) For a railroad that submitted a material modification to its FRA-approved program, there is no FRA-imposed deadline for resubmitting the material modification. However, pursuant to paragraph (g)(4) of this section, the railroad cannot implement the material modification until it has been approved by FRA.

(i) *Rescinding prior approval of program.* FRA reserves the right to revisit its prior approval of a railroad's program at any time.

(1) If upon such review, FRA discovers deficiencies in the program such that the program does not comply with subpart B of this part, FRA shall issue the railroad a letter rescinding its prior approval of the program and notifying the railroad of the deficiencies in its program that must be addressed.

(2) Within 30 days of FRA notifying the railroad of the deficiencies in its program, the railroad must address these deficiencies and resubmit its program to FRA. The resubmitted program must conform with the procedures and requirements contained in § 245.107.

(3) The process for submission and review of resubmitted programs under this paragraph (i) shall conform with paragraphs (c) through (f) of this section.

(4) If a railroad fails to resubmit its program to FRA within the timeframe prescribed in paragraph (i)(2) of this section and the railroad continues its dispatching operations, FRA may consider such actions to be a failure to implement a program.

(5) If FRA issues a letter disapproving the railroad's resubmitted program, the railroad shall continue to resubmit its program in accordance with this paragraph (i).

(6) A program that has its approval rescinded under paragraph (i)(1) of this section may remain in effect until whichever of the following happens first:

(i) FRA approves the railroad's resubmitted program; or

(ii) FRA disapproves the railroad's second attempt at resubmitting its program.

(7) If FRA disapproves a railroad's second attempt at resubmitting its program under this paragraph (i) and the railroad continues its dispatching operations, FRA may consider such actions to be a failure to implement a program.

(j) *Availability of certification program documents.* The following documents will be available on FRA's website (*railroads.dot.gov*):

(1) A railroad's originally submitted program, a resubmission of its program, or a material modification of its program;

(2) Any comments, submitted in accordance with paragraph (e) of this section, to a railroad's originally submitted program, a resubmission of its program, or a material modification of its program; and

(3) Any approval or disapproval letter issued by FRA in response to a railroad's originally submitted program, a resubmission of its program, or a material modification of its program.

§ 245.105 Implementation schedule for certification programs.

(a) Each railroad that submits its dispatcher certification program to FRA in accordance with § 245.103(a), may continue dispatching operations while it awaits approval of its program by FRA. However, if FRA disapproves a railroad's program on two occasions and the railroad continues dispatching operations, FRA may consider such actions to be a failure to implement a program.

(b) Each railroad that submits its dispatcher certification program to FRA in accordance with § 245.103(b), must have its program approved by FRA prior to commencing dispatching operations. If such railroad commences dispatching operations before its program is approved by FRA, FRA may consider such actions to be a failure to implement a program.

(c) By March 17, 2025, each railroad shall:

(1) In writing, designate as certified dispatchers all persons authorized by the railroad to perform the duties of a dispatcher as of March 17, 2025; and

(2) Issue a certificate that complies with § 245.207 to each person that it designates.

(d) Between March 17, 2025 and the date FRA approves the railroad's certification program, each railroad shall:

(1) In writing, designate as a certified dispatcher any person who has been authorized by the railroad to perform the duties of a dispatcher between March 17, 2025 and the date FRA approves the railroad's certification program; and

(2) Issue a certificate that complies with § 245.207 to each person that it designates.

(e) After March 17, 2025, no railroad shall permit or require a person to perform service as a dispatcher unless that person is a certified dispatcher.

(f) No railroad shall permit or require a person, designated as a certified dispatcher under the provisions of paragraph (c) or (d) of this section, to perform service as a certified dispatcher for more than three years after the date FRA approves the railroad's certification program unless that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.

(1) Except as provided in paragraph (f)(3) of this section, a person who has been designated as a certified dispatcher under the provisions of paragraph (c) or (d) of this section and who is eligible to receive a retirement pension in accordance with the terms of an applicable agreement or in accordance with the terms of the Railroad Retirement Act (45 U.S.C. 231) within three years from the date the certifying railroad's program is approved by FRA, may request in writing, that a railroad not recertify that person, pursuant to subpart B of this part, until three years from the date the certifying railroad's program is approved.

(2) Upon receipt of a written request pursuant to paragraph (f)(1) of this section, a railroad may wait to recertify the person making the request until the end of the three-year period after FRA has approved the railroad's certification program. If a railroad grants any request, it must grant the request of all eligible persons to every extent possible.

(3) A person who is subject to recertification under part 240 or 242 of this chapter may not make a request pursuant to paragraph (f)(1) of this section.

(g) After a railroad's certification program has been approved by FRA, the railroad shall only certify or recertify a person as a dispatcher if that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.

§ 245.107 Requirements for certification programs.

(a) *Railroad's certification program submission.* (1) A railroad's certification program submission must include a copy of the certification program and a request for approval. If a railroad is submitting a material modification to its program, the copy of the certification program must incorporate all of the material modifications the railroad would like to make.

(2) For a railroad's initial certification program submission, the request for approval can be in letter or narrative format and shall include a statement that the railroad is seeking approval of its program by FRA.

(3) If a railroad is making a material modification to a program that has been previously approved by FRA, the request for approval can be in letter or narrative format and shall include an explanation of all of the material modifications that the railroad is making to its program.

(4) A railroad will receive approval or disapproval notices from FRA by email.

(5) FRA may electronically store any materials required by this part.

(b) *Organization of the certification program.* Each program must be organized to present the required information in paragraphs (b)(1) through (6) of this section. Each section of the certification program must begin by giving the name, title, telephone number, and email address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

(1) *Section 1 of the program: general information and elections.* (i) The first section of the certification program must contain the name of the railroad, the person to be contacted concerning the request for approval (including the person's name, title, telephone number, and email address) and a statement electing either to accept responsibility for training persons not previously certified as dispatchers or to not accept this responsibility.

(ii) If a railroad elects not to provide initial dispatcher training, the railroad will be limited to recertifying persons initially certified by another railroad. A railroad can change its election by obtaining FRA approval of a material modification to its program in accordance with § 245.103(g).

(iii) If a railroad elects to accept responsibility for training persons not previously certified as dispatchers, the railroad must submit information on how such persons will be trained but is not required to actually perform such training. A railroad that elects to accept responsibility for the training of such persons may authorize another railroad or a non-railroad entity to perform the actual training effort. The electing railroad remains responsible for ensuring that such other training providers adhere to the training program the railroad submits.

(2) *Section 2 of the program: training persons previously certified.* The second section of the certification program must contain information about the railroad's program for training previously certified dispatchers, including all of the following information:

(i) As provided for in § 245.119(i), each railroad must have a program for the ongoing education of its dispatchers to ensure that they maintain the necessary knowledge concerning relevant Federal safety regulations,

operating rules and practices, familiarity with physical characteristics of the territory, and the dispatching systems and technology. The railroad must describe in this section how it will ensure that its dispatchers remain knowledgeable concerning the safe discharge of their responsibilities so as to comply with the standard set forth in § 245.119(i).

(ii) In accordance with the requirements in § 245.119(i), this section must contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matters covered, the frequency and duration of the training sessions (including the interval between attendance at such trainings), the training environment employed (for example, use of classroom, use of computer-based training, use of film or slide presentations, and use of on-the-job training), and which aspects of the program are voluntary or mandatory.

(iii) How the training will address a certified dispatcher's loss of knowledge over time.

(iv) How the training will address changed circumstances over time such as the introduction of new or modified technology including software modifications to dispatch systems and related signal and train control systems, new operating rule books, or significant changes in operations including alteration in the territory dispatchers are authorized to work over.

(v) A plan for familiarization training that addresses how long a person can be absent from dispatching on a territory before needing to be requalified on that territory (a time period that cannot exceed 12 months), and once that threshold is reached, how the person will acquire the needed familiarization training.

(vi) How the railroad will administer the training of previously certified dispatchers who have had their certification expire. If a railroad's certification program fails to specify how it will train these dispatchers, then the railroad shall require these dispatchers to successfully complete the railroad's entire training program.

(3) *Section 3 of the program: testing and evaluating persons previously certified.* The third section of the certification program must contain information about the railroad's program for testing and evaluating previously certified dispatchers including all of the following information:

(i) The railroad must describe in this section how it will ensure that its dispatchers demonstrate their knowledge concerning the safe discharge of their responsibilities so as to comply with the standards set forth in § 245.121.

(ii) The railroad must describe in this section how it will have ongoing testing and evaluation to ensure that its dispatchers have the necessary visual and hearing acuity as provided for in §§ 245.117 and 245.118. This section must also address how the railroad will ensure that its medical examiners have sufficient information concerning the railroad's operations, as well as the dispatcher's safety-related tasks, to effectively form appropriate conclusions about the ability of a particular individual to safely perform as a dispatcher.

(4) *Section 4 of the program: training, testing, and evaluating persons not previously certified.* Unless a railroad has made an election not to accept responsibility for conducting the initial training of dispatchers, the fourth section of the certification program must contain information about the railroad's program for educating, testing, and evaluating persons not previously certified as dispatchers including all of the following information:

(i) As provided for in § 245.119(c), a railroad that is issuing an initial dispatcher certification to a person must have a program for the training, testing, and evaluation of its dispatchers to ensure that they acquire the necessary knowledge and skills. A railroad must describe in this section how it will ensure that its dispatchers will acquire sufficient knowledge and skills and demonstrate their knowledge and skills concerning the safe discharge of their responsibilities.

(ii) This section must contain the same level of detail about the initial training program and the testing and evaluation of previously uncertified persons as is required for previously certified dispatchers in paragraphs (b)(2) and (3) of this section (Sections 2 and 3 of the program).

(iii) Railroads that elect to rely on other entities to conduct training away from the railroad's own territory and dispatching systems and technology must indicate how the student will be provided with the required training on the physical characteristics of the railroad's territory and the railroad's dispatching systems and technology.

(iv) How the railroad will administer the training of previously uncertified persons with extensive dispatching experience. If a railroad's certification program fails to specify how it will train these dispatchers, then the railroad shall require these dispatchers to successfully complete the railroad's entire training program.

(5) *Section 5 of the program: monitoring operational performance by certified dispatchers.* The fifth section of the certification program must contain information about the railroad's program for monitoring the operational performance of its certified dispatchers including all of the following information:

(i) Section 245.123 requires that a railroad perform ongoing monitoring of its dispatchers and that each dispatcher has an annual unannounced compliance test. A railroad must describe in this section how it will ensure that the railroad is monitoring that its dispatchers demonstrate their skills concerning the safe discharge of their responsibilities.

(ii) A railroad must describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 245.123.

(6) *Section 6 of the program: procedures for routine administration of the dispatcher certification program.* The final section of the certification program must contain a summary of how the railroad's program and procedures will implement the various aspects of the regulatory provisions in this part that relate to routine administration of its certification program for dispatchers. Specifically, this section must address the procedural aspects of the following provisions and must describe the manner in which the railroad will implement its program so as to comply with all of the following provisions:

(i) Section 245.301 which provides that each railroad must have procedures for review and comment on adverse information.

(ii) Sections 245.111, 245.113, 245.115, and 245.303 which require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as a railroad worker.

(iii) Sections 245.109, 245.201, and 245.301 which place a duty on the railroad to make a series of determinations. When describing how it will implement its program to comply with these sections, a railroad must describe: the procedures it will utilize to ensure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that a person will or will be not certified; and how the railroad will communicate adverse decisions.

(iv) Sections 245.109, 245.117, 245.118, 245.119, and 245.121 which place a duty on the railroad to make a

series of determinations. When describing how it will implement its program to comply with these sections, a railroad must describe how it will document the factual basis the railroad relied on in making determinations under these sections.

(v) Section 245.125 which permits reliance on certification determinations made by other railroads.

(vi) Sections 245.207 and 245.307 which contain the requirements for replacing lost certificates and the conduct of certification revocation proceedings.

§ 245.109 Determinations required for certification and recertification.

(a) After FRA has approved a railroad's dispatcher certification program, the railroad, prior to initially certifying or recertifying any person as a dispatcher, shall, in accordance with its FRA-approved program, determine in writing that:

(1) The individual meets the prior safety conduct eligibility requirements of §§ 245.111 and 245.113;

(2) The individual meets the eligibility requirements of §§ 245.115 and 245.303;

(3) The individual meets the visual and hearing acuity standards of §§ 245.117 and 245.118;

(4) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 245.121; and

(5) If applicable, the individual has completed a training program that meets the requirements of § 245.119.

(b) Nothing in this section, § 245.111, or § 245.113 shall be construed to prevent persons subject to this part from entering into an agreement that results in a railroad obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 245.111 or § 245.113.

§ 245.111 safety conduct as motor vehicle operator.

(a) Except as provided in paragraphs (b) through (e) of this section, after FRA has approved a railroad's dispatcher certification program, the railroad, prior to initially certifying or recertifying any person as a dispatcher, shall determine that the person meets the eligibility requirements of this section involving prior conduct as a motor vehicle operator.

(b) A railroad shall initially certify a person as a dispatcher for 60 days if the person:

(1) Requested the information required by paragraph (g) of this section at least 60 days prior to the date of the decision to certify that person; and

(2) Otherwise meets the eligibility requirements provided in § 245.109(a)(1) through (5).

(c) A railroad shall recertify a person as a dispatcher for 60 days from the expiration date of that person's certification if the person:

(1) Requested the information required by paragraph (g) of this section at least 60 days prior to the date of the decision to recertify that person; and

(2) Otherwise meets the eligibility requirements provided in § 245.109(a)(1) through (5).

(d) Except as provided in paragraph (e) of this section, if a railroad who certified or recertified a person for 60 days pursuant to paragraph (b) or (c) of this section does not obtain and evaluate the information requested pursuant to paragraph (g) of this section within those 60 days, that person will be ineligible to perform as a dispatcher until the information can be evaluated by the railroad.

(e) If a person requests the information required pursuant to paragraph (g) of this section but is unable to obtain it, that person or the railroad certifying or recertifying that person may petition for a waiver of the requirements of paragraph (a) of this section in accordance with the provisions of part 211 of this chapter. A railroad shall certify or recertify a person during the pendency of the waiver request if the person otherwise meets the eligibility requirements provided in § 245.109(a)(1) through (5).

(f) Except for persons designated as dispatchers under § 245.105(c) or (d) or for persons covered by paragraph (j) of this section, each person seeking certification or recertification under this part shall, no more than one year prior to the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (g) through (i) of this section to make information concerning their driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State, Federal, or foreign law to make information concerning their driving record available to that railroad.

(g) Each person seeking certification or recertification under this part shall request, in writing, that the chief of each driver licensing agency identified in paragraph (h) of this section provide a copy of that agency's available information concerning their driving record to the railroad that is considering such certification or recertification.

(h) Each person shall request the information required under paragraph (g) of this section from:

(1) The chief of the driver licensing agency of any jurisdiction, including a State or foreign country, which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other jurisdiction, including states or foreign countries, where the person held a driver's license within the preceding three years.

(i) If advised by the railroad that a driver licensing agency has informed the railroad that additional information concerning that person's driving history may exist in the files of a State agency or foreign country not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the driver licensing agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

(2) Take any additional action required by State, Federal, or foreign law to obtain that additional information.

(j) Any person who has never obtained a motor vehicle driver's license is not required to comply with the provisions of paragraph (g) of this section but shall notify the railroad of that fact in accordance with procedures established by the railroad in its certification program.

(k) Each certified dispatcher or person seeking initial certification shall report motor vehicle incidents described in paragraphs (m)(1) and (2) of this section to the certifying railroad within 48 hours of being convicted for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such violations. For purposes of this paragraph (k) and paragraph (m) of this section, ''State action'' means action of the jurisdiction that has issued the motor vehicle driver's license, including a foreign country. For purposes of dispatcher certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license.

(l) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred:

(1) Prior to July 22, 2024;

(2) More than three years before the date of the railroad's certification decision; or

(3) At a time other than that specifically provided for in § 245.111, § 245.113, § 245.115, or § 245.303.

(m) When evaluating a person's motor vehicle driving record, a railroad shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(2) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for refusal to undergo such testing as is required by State or foreign law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(n) If such an incident, described in paragraph (m) of this section, is identified:

(1) The railroad shall provide the data to the railroad's DAC, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder.

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the DAC in the context of such evaluation.

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the DAC, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the DAC consistent with the technical standards specified in 49 CFR part 219, subpart H, as well as 49 CFR part 40.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the provisions of § 245.115(c) will apply.

(5) If the person fails to comply with the requirements of paragraph (n)(2) of this section, the person shall be ineligible to perform as a certified dispatcher until such time as the person complies with the requirements.

(o) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.113 Prior safety conduct with other railroads.

(a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate, that the certification candidate meets the eligibility requirements of this section.

(b) If the certification candidate has not been employed or certified by any other railroad in the previous five years, they do not have to submit a request in accordance with paragraph (c) of this section, but they must notify the railroad of this fact in accordance with procedures established by the railroad in its certification program.

(c) Except as provided for in paragraph (b) of this section, each person seeking certification or recertification under this part shall submit a written request to each railroad that employed or certified the person within the previous five years to provide the following information to the railroad that is considering whether to certify or recertify that person as a dispatcher:

(1) Information about that person's compliance with § 245.111 within the three years preceding the date of the request;

(2) Information about that person's compliance with § 245.115 within the five years preceding the date of the request; and

(3) Information about that person's compliance with § 245.303 within the five years preceding the date of the request.

(d) Each person submitting a written request required by paragraph (c) of this section shall:

(1) Submit the request no more than one year before the date of the railroad's decision on certification or recertification; and

(2) Take any additional actions, including providing any consent required by State or Federal law to make information concerning their service record available to the railroad.

(e) Within 30 days after receipt of a written request that complies with paragraph (c) of this section, a railroad shall provide the information requested to the railroad designated in the written request.

(f) If a railroad is unable to provide the information requested within 30 days after receipt of a written request that complies with paragraph (c) of this section, the railroad shall provide an explanation, in writing, of why it cannot provide the information within the requested time frame. If the railroad will ultimately be able to provide the requested information, the explanation shall state approximately how much more time the railroad needs to supply the requested information. If the railroad will not be able to provide the requested information, the explanation shall provide an adequate explanation for why it cannot provide this information. Copies of this explanation shall be provided to the railroad designated in the written request and to the person who submitted the written request for information.

(g) When evaluating a person's prior safety conduct with a different railroad, a railroad shall not consider information concerning prior safety conduct that occurred:

(1) Prior to July 22, 2024; or

(2) At a time other than that specifically provided for in § 245.111, § 245.113, § 245.115, or § 245.303.

(h) Each railroad shall adopt and comply with a program that complies with the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program that complies with the requirements of this subject, that person shall be considered to have violated the requirements of this section.

§ 245.115 Substance abuse disorders and alcohol drug rules compliance.

(a) *Eligibility determination.* After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate, that the person meets the eligibility requirements of this section.

(b) *Documentation.* In order to make the determination required under paragraph (c) of this section, a railroad shall have on file documents pertinent to that determination, including a written document from its DAC which states their professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder.

(c) *Fitness requirement.* (1) A person who has an active substance abuse disorder shall be denied certification or recertification as a dispatcher.

(2) Except as provided for in paragraph (f) of this section, a certified dispatcher who is determined to have an active substance abuse disorder shall be ineligible to hold certification. Consistent with other provisions of this part, certification may be reinstated as

provided in paragraph (e) of this section.

(3) In the case of a current employee of a railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 245.111), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.1001(b)(1) of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to ineligibility for certification.

(d) *Prior alcohol/drug conduct; Federal rule compliance.* (1) In determining whether a person may be or remain certified as a dispatcher, a railroad shall consider conduct described in paragraph (d)(2) of this section that occurred within a period of five consecutive years prior to the review. A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph (d).

(2) A railroad shall consider any violation of § 219.101 or § 219.102 of this chapter and any refusal to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative.

(3) A period of ineligibility described in this section shall begin:

(i) For a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(ii) For a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been suspended.

(4) The period of ineligibility described in this section shall be determined in accordance with the following standards:

(i) In the case of one violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (e) of this section. In the case of two violations of § 219.102 of this chapter, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of nine months (unless identification of the violation was through a qualifying referral program described in § 219.1001 of this chapter and the dispatcher waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in paragraph (e) of this section). In the case of two or more violations of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of five years.

(iv) If a person refuses to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative, the person shall be ineligible to hold a certificate for a period of nine months.

(e) *Future eligibility to hold certificate following alcohol/drug violation.* The following requirements apply to a person who has been denied certification or who has had their certification suspended or revoked as a result of conduct described in paragraph (d) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has:

(i) Been evaluated by a SAP to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the SAP prior to return to service; and

(iii) In accordance with the testing procedures of 49 CFR part 219, subpart H, has had a return-to-duty alcohol test with an alcohol concentration of less than .02 and a return-to-duty body fluid sample that tested negative for controlled substances.

(2) A dispatcher placed in service or returned to service under the conditions described in paragraph (e)(1) of this section shall continue in any program of counseling or treatment deemed necessary by the SAP and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than five years following return to service. Follow-up tests shall include not fewer than six alcohol tests and six drug tests during the first year following return to service.

(3) Return-to-duty and follow-up alcohol and drug tests shall be performed consistent with the requirements of 49 CFR part 219, subpart H.

(4) This paragraph (e) does not create an entitlement to utilize the services of a railroad SAP, to be afforded leave from employment for counseling or treatment, or to employment as a dispatcher. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(f) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.1003(f) of this chapter to treat qualified referrals for substance abuse counseling and treatment as confidential; and the certification status of a dispatcher who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its referral policy a provision that, at least with respect to a certified dispatcher or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP or DAC official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

(g) *Complying with certification program.* Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.117 Visual acuity.

(a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate, that the person meets the standards for visual acuity prescribed in this section and appendix B to this part.

(b) Any examination required under this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant.

(c) Except as provided in paragraph (d) of this section, each dispatcher shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing, either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses; or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix B to this part.

(d) A person not meeting the thresholds in paragraph (c) of this section shall, upon request of the certification candidate, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely perform as a dispatcher. In such cases, the following procedures will apply:

(1) In accordance with the guidance prescribed in appendix B to this part, a person is entitled to:

(i) One retest without making any showing; and

(ii) An additional retest if the person provides evidence that circumstances have changed since the last test to the extent that the person may now be able to safely perform as a dispatcher.

(2) The railroad shall provide its medical examiner with a copy of this part, including all appendices.

(3) If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraph (c) of this section, the person has the ability to safely perform as a dispatcher, the railroad may conclude that the person satisfies the visual acuity requirements of this section to be a certified dispatcher. Such certification will be conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(e) To make the determination required under paragraph (a) of this section, a railroad shall have on file the following for each certification candidate:

(1) A medical examiner's certificate that the candidate has been medically examined and either does or does not meet the visual acuity standards prescribed in paragraph (c) of this section.

(2) If needed under paragraph (d) of this section, a medical examiner's written professional opinion which states the basis for their determination that:

(i) The candidate can be certified, under certain conditions if necessary, even though the candidate does not meet the visual acuity standards prescribed in paragraph (c) of this section; or

(ii) The candidate's visual acuity prevents the candidate from being able to safely perform as a dispatcher.

(f) If the examination required under this section shows that the person needs corrective lenses to meet the standards for visual acuity prescribed in this section and appendix B to this part, that person shall use corrective lenses at all times while performing as a dispatcher unless the railroad's medical examiner subsequently determines in writing that the person can safely perform as a dispatcher without corrective lenses.

(g) When a certified dispatcher becomes aware that their vision has deteriorated, they shall notify the railroad's medical department or other appropriate railroad official of the deterioration. Such notification must occur prior to performing any subsequent service as a dispatcher. The individual cannot return to service as a dispatcher until they are reexamined and determined by the railroad's medical examiner to satisfy the visual acuity standards prescribed in this section and appendix B to this part.

(h) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.118 Hearing acuity.

(a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate, that the person meets the standards for hearing acuity prescribed in this section and appendix B to this part.

(b) Any examination required under this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant.

(c) Except as provided in paragraph (d) of this section, each dispatcher shall have hearing acuity that meets or exceeds the following thresholds with or without use of a hearing aid: The person does not have an average hearing loss in the better ear greater than 40 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz. The hearing test or audiogram used to show a person's hearing acuity shall meet the requirements of one of the following:

(1) As required in 29 CFR 1910.95(h) (Occupational Safety and Health Administration);

(2) As required in § 227.111 of this chapter; or

(3) Conducted using an audiometer that meets the specifications of, and is maintained and used in accordance with, a formal industry standard such as American National Standards Institute (ANSI) S3.6, ''Specifications for Audiometers.''

(d) A person not meeting the thresholds in paragraph (c) of this section shall, upon request of the certification candidate, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely perform as a dispatcher. In such cases, the following procedures will apply:

(1) In accordance with the guidance prescribed in appendix B to this part, a person is entitled to:

(i) One retest without making any showing; and

(ii) An additional retest if the person provides evidence that circumstances have changed since the last test to the extent that the person may now be able to safely perform as a dispatcher.

(2) The railroad shall provide its medical examiner with a copy of this part, including all appendices.

(3) If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraph (c) of this section, the person has the ability to safely perform as a dispatcher, the railroad may conclude that the person satisfies the hearing acuity requirements of this section to be a certified dispatcher. Such certification will be conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(e) To make the determination required under paragraph (a) of this section, a railroad shall have on file the following for each certification candidate:

(1) A medical examiner's certificate that the candidate has been medically examined and either does or does not meet the hearing acuity standards prescribed in paragraph (c) of this section.

(2) If needed under paragraph (d) of this section, a medical examiner's written professional opinion which states the basis for their determination that:

(i) The candidate can be certified, under certain conditions if necessary, even though the candidate does not meet the hearing acuity standards prescribed in paragraph (c) of this section; or

(ii) The candidate's hearing acuity prevents the candidate from being able to safely perform as a dispatcher.

(f) If the examination required under this section shows that the person needs a hearing aid to meet the standards for hearing acuity prescribed in this section and appendix B to this part, that person shall use a hearing aid at all times while performing as a dispatcher unless the

railroad's medical examiner subsequently determines in writing that the person can safely perform as a dispatcher without a hearing aid.

(g) When a certified dispatcher becomes aware that their hearing has deteriorated, they shall notify the railroad's medical department or other appropriate railroad official of the deterioration. Such notification must occur prior to performing any subsequent service as a dispatcher. The individual cannot return to service as a dispatcher until they are reexamined and determined by the railroad's medical examiner to satisfy the hearing acuity standards prescribed in this section and appendix B to this part.

(h) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.119 Training requirements.

(a) After FRA has approved a railroad's certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate, that the person has successfully completed the training, in accordance with the requirements of this section.

(b) A railroad that elects to accept responsibility to provide initial dispatcher training to persons who have not been previously certified as dispatchers shall state in its certification program whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by the railroad.

(c) A railroad that elects to train persons not previously certified as dispatchers shall develop an initial training program which, at a minimum, includes the following:

(1) An explanation of how training must be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, on-the-job training, or other formal training. The curriculum shall be designed to impart knowledge of, and ability to comply with, applicable Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those applicable Federal railroad safety laws, regulations, and orders. This training shall document a person's knowledge of, and ability to comply with, Federal railroad safety laws, regulations, and orders, as well as railroad rules and procedures.

(2) An on-the-job training component which shall include the following:

(i) A syllabus describing content, required tasks, and related steps the person learning the job shall be able to perform within a specified timeframe;

(ii) A statement of the conditions (*e.g.,* prerequisites, dispatch and related dispatch support systems, documentation, briefings, demonstrations, and practice) necessary for learning transfer; and

(iii) A statement of the standards by which proficiency is measured through a combination of task/step accuracy, completeness, and repetition.

(3) A description of the processes to review and modify its training program when new safety-related railroad laws, regulations, orders, technologies, procedures, software, or equipment are introduced into the workplace, including how it is determined if additional or refresher training is needed.

(d) Prior to beginning the initial dispatching related tasks associated with on-the-job exercises discussed in paragraph (c)(2) of this section, each railroad shall make any relevant information or materials, such as operating rules, safety rules, or other rules, available for referencing by certification candidates.

(e) Prior to a person, not previously certified as a dispatcher, being certified as a dispatcher, a railroad shall require the person to:

(1) Successfully complete the formal initial training program developed pursuant to paragraph (c) of this section and any associated examinations covering the skills and knowledge the person will need to perform the tasks necessary to be a dispatcher;

(2) Perform on-the-job training and demonstrate on-the-job proficiency, with input from a qualified instructor, by successfully completing the tasks and using the dispatching systems and technology necessary to be a dispatcher. A certification candidate may only perform such tasks under the direct onsite supervision of a qualified instructor; and

(3) Demonstrate knowledge of the physical characteristics of any assigned territory. If the railroad uses a written test to fulfill this requirement, the railroad must provide the certification candidate with an opportunity to consult with a supervisory employee who possesses territorial qualifications for the territory to explain a question.

(f) In making the determination required under paragraph (a) of this section, a railroad shall have written documentation showing that:

(1) The person completed a training program that complies with paragraph (c) of this section (if the person has not been previously certified as a dispatcher);

(2) The person demonstrated their knowledge by achieving a passing grade under the testing and evaluation procedures of the training program; and

(3) The person achieved a passing score on the physical characteristics exam associated with the territories, or its pertinent segments, over which the person will be performing dispatching service.

(g) The certification program, required under this part and submitted in accordance with the procedures and requirements described in § 245.107, shall include:

(1) The methods that a person may acquire familiarity with the physical characteristics of a territory;

(2) The procedures used to qualify and requalify a dispatcher on a territory; and

(3) The maximum time period in which a dispatcher can be absent from a territory before requalification is required. In accordance with § 245.120(c), this time period cannot exceed 12 months.

(h) If ownership of a railroad is being transferred from one company to another, the dispatchers of the acquiring company may receive familiarization training from the selling company prior to the acquiring company commencing operation.

(i) A railroad shall provide for the continuing education of its certified dispatchers to ensure that each dispatcher maintains the necessary knowledge concerning:

(1) Railroad safety and operating rules;

(2) Physical territory;

(3) Dispatching systems and technology; and

(4) Compliance with all applicable Federal regulations including, but not limited to, hazardous materials, passenger train emergency preparedness, emergency response procedures, and physical characteristics of a territory.

(j) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.120 Requirements for territorial qualification.

(a) After FRA has approved a railroad's certification program, a railroad shall not permit or require a person to serve as a dispatcher on a particular territory unless that railroad determines that:

(1) The person is a certified dispatcher; and

(2) The person either:

(i) Possesses the necessary territorial qualifications for the applicable territory pursuant to § 245.119; or

(ii) Is assisted by a Dispatcher Pilot who is qualified on the territory.

(b) If a person is called to serve on a territory that they are not qualified on, the person must immediately notify the railroad that they are not qualified on the assigned territory.

(c) A person shall no longer be considered qualified on a territory if they have not worked on that territory as a dispatcher in the previous 12 months.

(d) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.121 Knowledge testing.

(a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate and in accordance with the requirements of this section, that the person has demonstrated sufficient knowledge of the railroad's rules and practices for the safe movement of trains.

(b) In order to make the knowledge determination required by paragraph (a) of this section, a railroad shall have procedures for testing a person being evaluated for certification as a dispatcher that are:

(1) Designed to examine a person's knowledge of the railroad's operating rules and practices for the safe movement of trains;

(2) Objective in nature;

(3) In written or electronic form;

(4) Covering the following subjects:

(i) Safety and operating rules;

(ii) Timetable instructions;

(iii) Compliance with all applicable Federal regulations;

(iv) Physical characteristics of the territory or territories on which a person is currently working or training to qualify as a dispatcher; and

(v) Dispatching systems and technology.

(5) Sufficient to accurately measure the person's knowledge of the covered subjects; and

(6) Conducted without open reference books or other materials except to the degree the person is being tested on their ability to use such reference books or materials.

(c) The railroad shall provide the certification candidate with an opportunity to consult with a supervisory employee who possesses territorial qualifications for the territory to explain a test question.

(d) If a person fails the test, no railroad shall permit or require that person to work as a dispatcher prior to that person's achieving a passing score during a reexamination of the test.

(e) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.123 Monitoring operational performance.

(a) Each railroad's certification program shall describe how it will monitor the operational performance of its certified dispatchers by including procedures for:

(1) Giving each certified dispatcher at least one unannounced railroad and Federal rules, territorial and dispatch systems compliance test each calendar year, except as provided for in paragraph (c) of this section;

(2) Giving unannounced compliance tests to certified dispatchers who return to dispatcher service after performing service that does not require certification pursuant to this part, as described in paragraph (c) of this section; and

(3) What actions the railroad will take if it finds deficiencies in a dispatcher's performance during an unannounced compliance test.

(b) An unannounced compliance test shall:

(1) Test certified dispatchers for compliance with one or more operational tests in accordance with the provisions of § 217.9 of this chapter;

(2) Be performed by a railroad officer who meets the requirements of § 217.9(b)(1) of this chapter; and

(3) Be given to each certified dispatcher at least once each calendar year, except as provided for in paragraph (c) of this section.

(c) A certified dispatcher who is not performing service that requires certification pursuant to this part does not need to be given an unannounced compliance test. However, when the certified dispatcher returns to service that requires certification pursuant to this part after not being given an unannounced compliance test in a calendar year, the railroad shall:

(1) Give the certified dispatcher an unannounced compliance test within 30 days of their return to dispatcher service; and

(2) Retain a written record that includes the following information:

(i) The date the dispatcher stopped performing service that required certification pursuant to this part;

(ii) The date the dispatcher returned to service that required certification pursuant to this part; and

(iii) The date and the result of the unannounced compliance test that was performed following the dispatcher's return to service requiring certification.

(d) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.125 Certification determinations made by other railroads.

(a) A railroad that is considering certification of a person as a dispatcher may rely on certain determinations made by another railroad concerning that person's certification.

(b) A railroad relying on certification determinations made by another railroad shall still be responsible for determining that:

(1) The prior certification is still valid in accordance with the provisions of §§ 245.201 and 245.307;

(2) The person has received training on the physical characteristics of the new territory in accordance with § 245.119; and

(3) The person has demonstrated the necessary knowledge concerning the railroad's operating rules, territory, dispatch systems and technology in accordance with § 245.121.

Subpart C—Administration of the Certification Program

§ 245.201 Time limitations for certification.

(a) After FRA approves a railroad's dispatcher certification program, that railroad shall not certify or recertify a

person as a dispatcher if the railroad is making:

(1) A determination concerning eligibility under §§ 245.111, 245.113, 245.115, and 245.303 and the eligibility data being relied on was furnished more than one year before the date of the railroad's certification decision;

(2) A determination concerning visual or hearing acuity and the medical examination being relied on was conducted more than 450 days before the date of the railroad's certification decision; or

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than one year before the date of the railroad's certification decision, or more than two years before the date of the railroad's certification decision if the railroad administers a knowledge testing program pursuant to § 245.121 at intervals that do not exceed two years.

(b) The time limitations of paragraph (a) of this section do not apply to a railroad that is making a certification decision in reliance on determinations made by another railroad in accordance with § 245.125.

(c) Except if a person is designated as a certified dispatcher under § 245.105(c) or (d), no railroad shall certify a person as a dispatcher for an interval of more than three years.

(d) Each railroad shall issue each certified dispatcher a certificate that complies with § 245.207 no later than 30 days from the date of its decision to certify or recertify that person.

§ 245.203 Retaining information supporting determinations.

(a) After FRA approves a railroad's dispatcher certification program, any time the railroad issues, denies, or revokes a certificate after making the determinations required under § 245.109, it shall maintain a record for each certified dispatcher and certification candidate. Each record shall contain the information, described in paragraph (b) of this section, that the railroad relied on in making the determinations required under § 245.109.

(b) A railroad shall retain the following information:

(1) Relevant data from the railroad's records concerning the person's prior safety conduct and eligibility;

(2) Relevant data furnished by another railroad;

(3) Relevant data furnished by a governmental agency concerning the person's motor vehicle driving record;

(4) Relevant data furnished by the person seeking certification concerning their eligibility;

(5) The relevant test results data concerning visual and hearing acuity;

(6) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's visual or hearing acuity;

(7) Relevant data from the railroad's records concerning the person's success or failure on knowledge test(s) under § 245.121;

(8) A sample copy of the written knowledge test or tests administered; and

(9) The relevant data from the railroad's records concerning the person's success or failure on unannounced tests the railroad performed to monitor the dispatcher's performance in accordance with § 245.123.

(c) If a railroad is relying on successful completion of an approved training program conducted by another entity, the relying railroad shall maintain a record for each certification candidate that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge and relied on by the railroad in making its determinations.

(d) If a railroad is relying on a certification decision initially made by another railroad, the relying railroad shall maintain a record for each certification candidate that contains the relevant data furnished by the other railroad which it relied on in making its determinations.

(e) All records required under this section shall be retained by the railroad for a period of six years from the date of the certification, recertification, denial, or revocation decision and shall, upon request, be made available to FRA representatives in a timely manner.

(f) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or

(2) Otherwise falsify such records through material misstatement, omission, or mutilation.

(g) Nothing in this section precludes a railroad from maintaining the information required to be retained under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or individual records;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record;

(3) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to a record uniquely identifies the person making the amendment; and

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information which can be easily produced in an electronic or printed format that can be:

(i) Provided to FRA representatives in a timely manner; and

(ii) Authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by an FRA representative.

§ 245.205 List of certified dispatchers and recordkeeping.

(a) After a railroad's certification program has received its initial approval from FRA, pursuant to § 245.103(f)(1), the railroad must maintain a list of each person who is currently certified as a dispatcher by the railroad. The list must include the date of the railroad's certification decision and the date the person's certification expires.

(b) The list shall:

(1) Be updated at least annually;

(2) Be made available, upon request, to FRA representatives in a timely manner; and

(3) Be available either:

(i) In electronic format pursuant to paragraph (c) of this section; or

(ii) At the divisional or regional headquarters of the railroad.

(c) If a railroad elects to maintain its list in an electronic format, it must:

(1) Maintain an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or the list;

(2) Have its program and data storage system protected by a security system that utilizes an employee identification

number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) An entry on the list cannot be deleted or altered by any individual after the entry is certified by the employee who created the entry;

(3) Have any amendment to the list either:

(i) Electronically stored apart from the entry on the list that it amends; or

(ii) Electronically attached to the entry on the list as information without changing the original entry;

(4) Ensure that each amendment to the list uniquely identifies the person making the amendment; and

(5) Ensure that the system employed for data storage permits reasonable access and retrieval of the information which can be easily produced in an electronic or printed format that can be:

(i) Provided to FRA representatives in a timely manner; and

(ii) Authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by an FRA representative.

(d) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the list required by this section; or

(2) Otherwise falsify such list through material misstatement, omission, or mutilation.

§ 245.207 Certificate requirements.

(a) Each person who becomes a certified dispatcher in accordance with this part shall be issued a paper or electronic certificate that must:

(1) Identify the railroad or parent company that is issuing the certificate;

(2) Indicate that it is a dispatcher certificate;

(3) Provide the following information about the certified person:

(i) Name;

(ii) Employee identification number; and

(iii) Either a physical description or photograph of the person;

(4) Identify any conditions or limitations, including conditions to ameliorate visual or hearing acuity deficiencies, that restrict, limit, or alter the person's abilities to work as a dispatcher;

(5) Show the effective date of the certification;

(6) Show the expiration date of the certification unless the certificate was issued pursuant to § 245.105(c) or (d);

(7) Be signed by an individual designated in accordance with paragraph (b) of this section; and

(8) Be electronic or be of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Each railroad shall designate in writing any person it authorizes to sign the certificates described in this section. The designation shall identify such persons by name or job title.

(c) Nothing in this section shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents.

(d) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on a certificate; or

(2) Otherwise falsify a certificate through material misstatement, omission, or mutilation.

(e) Except as provided for in paragraph (g) of this section, each certified dispatcher shall:

(1) Have their certificate in their possession while on duty as a dispatcher; and

(2) Display their certificate upon a request from:

(i) An FRA representative;

(ii) A state inspector authorized under part 212 of this chapter;

(iii) An officer of the issuing railroad; or

(iv) An officer of the dispatcher's employer if the dispatcher is not employed by the issuing railroad.

(f) If a dispatcher's certificate is lost, stolen, or mutilated, the railroad shall promptly replace the certificate at no cost to the dispatcher.

(g) A certified dispatcher is exempt from the requirements of paragraph (e) of this section if:

(1) The railroad made its certification or recertification decision within the last 30 days and the dispatcher has not yet received their certificate; or

(2) The dispatcher's certificate was lost, stolen, or mutilated, and the railroad has not yet issued a replacement certificate to the dispatcher.

(h) Any dispatcher who is notified or called to serve as a dispatcher and such service would cause the dispatcher to exceed certificate limitations, set forth in accordance with subpart B of this part, shall immediately notify the railroad that they are not authorized to perform that anticipated service and it shall be unlawful for the railroad to require such service.

(i) Nothing in this section shall be deemed to alter a certified dispatcher's duty to comply with other provisions of this chapter concerning railroad safety.

§ 245.213 Multiple certifications.

(a) A person who holds a dispatcher certificate may also be certified in other crafts, such as a locomotive engineer or conductor.

(b) A railroad that issues multiple certificates to a person, shall, to the extent possible, coordinate the expiration date of those certificates.

(c) Paragraphs (c)(1) through (3) of this section apply to persons who are currently certified as a dispatcher for multiple railroads or are seeking to become certified dispatchers for multiple railroads.

(1) A person who holds a current dispatcher certificate from more than one railroad shall immediately notify the other certifying railroad(s) if they are denied dispatcher certification or recertification under § 245.301 by another railroad or has their dispatcher certification suspended or revoked under § 245.307 by another railroad.

(2) If a person has their dispatcher certification suspended or revoked by a railroad under § 245.307, they may not work as a dispatcher for any other railroad during the period that their certification is suspended or revoked.

(3) If a person has their dispatcher certification suspended or revoked by a railroad under § 245.307, they must notify any railroad that they are seeking dispatcher certification from that their dispatcher certification is currently suspended or revoked by another railroad.

(d) Paragraphs (d)(1) through (4) of this section apply to persons who are currently certified as a dispatcher and also currently certified in another craft, such as a locomotive engineer or conductor.

(1) If a person's dispatcher certification is revoked under § 245.307 for a violation of § 245.303(e)(7), they may not work in another certified craft, such as a locomotive engineer or conductor, for any railroad during the period of revocation.

(2) If a person's dispatcher certification is revoked under § 245.307 for a violation of § 245.303(e)(1) through (6), they may work in another certified craft, such as a locomotive engineer or conductor, during the period of revocation.

(3) If any of a person's non-dispatcher certifications are revoked for failure to comply with § 219.101 of this chapter, they may not work as a dispatcher for any railroad during the period of revocation.

(4) If any of a person's non-dispatcher certifications are revoked for any reason

other than a failure to comply with § 219.101 of this chapter, they may work as a dispatcher during the period of revocation.

(e) A person who has had their dispatcher certification revoked for failure to comply with § 219.101 of this chapter may not obtain any other certification pursuant to this chapter from any railroad during the period of revocation.

(f) A person who has had any of their non-dispatcher certifications revoked for failure to comply with § 219.101 of this chapter, may not obtain a dispatcher certification pursuant to this part from any railroad during the period of revocation.

(g) A railroad that denies a person dispatcher certification or recertification under § 245.301 shall not, solely on the basis of that denial, deny or revoke that person's non-dispatcher certifications or recertifications.

(h) A railroad that denies a person any non-dispatcher certification or recertification pursuant to this chapter shall not, solely on the basis of that denial, deny or revoke that person's dispatcher certification or recertification.

(i) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified in multiple crafts as long as the single certificate complies with all of the certificate requirements for those crafts.

(j) A person who is certified in multiple crafts and who is involved in a revocable event, as described in this chapter, may only have one certificate revoked for that event. The determination by the railroad as to which certificate to revoke must be based on the work the person was performing at the time the revocable event occurred.

§ 245.215 Railroad oversight responsibilities.

(a) No later than March 31 of each year (beginning in calendar year 2027), each Class I railroad (including the National Railroad Passenger Corporation), each railroad providing commuter service, and each Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified dispatchers during the prior calendar year.

(b) Each review and analysis shall involve:

(1) The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;

(2) The number and nature of FRA reported train accidents attributed to poor safety performance by dispatchers; and

(3) The number and type of operational monitoring test failures recorded by railroad officers who meet the requirements of § 217.9(b)(1) of this chapter.

(c) Based on that review and analysis, each railroad shall determine what action(s) it will take to improve the safety of railroad operations to reduce or eliminate future incidents of that nature.

(d) If requested in writing by FRA, by the president of a labor organization that represents the railroad's dispatchers, or by a railroad's certified dispatcher that is not represented by a labor organization, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.

(e) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories:

(1) Incidents involving failure to properly issue or apply mandatory directives when warranted.

(2) Incidents involving improperly authorizing a train or on-track equipment to enter into an out-of-service or blue flag protected track.

(3) Incidents involving granting permission for a train or on-track equipment to enter into established RWIC limits without authority or permission from the RWIC.

(4) Incidents involving removal of blocking devices or established protection of RWIC working limits prior to the RWIC releasing the limits.

(5) Incidents involving failure to properly apply blocking devices or failure to establish proper protection for specified working limits or movements of trains or on-track equipment.

(6) Incidents involving granting permission for a train to enter Positive Train Control (PTC) or Cab Signal limits with inoperative or malfunctioning PTC or Cab Signal equipment.

(7) Incidents involving noncompliance with part 219 of this chapter.

(f) For reporting purposes, each category of detected poor safety conduct identified in paragraph (e) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflect incidents requiring an FRA accident/incident report under part 225 of this chapter; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

(g) For reporting purposes, each instance of detected poor safety conduct identified in paragraph (b) of this section shall be capable of being annotated to reflect the following:

(1) The nature of the remedial action taken, and the number of events subdivided, so as to reflect which of the following actions was selected:

(i) Imposition of informal discipline;

(ii) Imposition of formal discipline;

(iii) Provision of informal training; or

(iv) Provision of formal training; and

(2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the railroad:

(i) The person was withheld from service;

(ii) The person was dismissed from employment; or

(iii) The person was issued demerits. If more than one form of punishment was imposed, only the punishment deemed the most severe shall be shown.

(h) For reporting purposes, each instance of detected poor safety conduct identified in paragraph (b) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

(1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

(2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities: The National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment, or other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act.

(i) For reporting purposes, an instance of poor safety conduct involving a person who is a certified dispatcher and is certified in another craft, such as a locomotive engineer or conductor, need only be reported once (*e.g.,* either under this section or § 240.309 or § 242.215 of this chapter). The determination as to where to report the instance of poor safety conduct should be based on the work the person was performing at the time the conduct occurred.

Subpart D—Denial and Revocation of Certification

§ 245.301 Process for denying certification.

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the dispatcher candidate with any documents or records, including written statements, related to failure to meet a requirement of this part which support its pending denial decision.

(b) If a railroad denies a person certification or recertification, it shall issue a decision that complies with all of the following requirements:

(1) It must be in writing.

(2) It must explain the basis for the railroad's denial decision.

(3) It must address any explanation or rebuttal information that the certification candidate provided pursuant to paragraph (a) of this section.

(4) It must include the date of the railroad's decision.

(5) It must be served on the candidate no later than 10 days after the railroad's decision.

(c) A railroad shall not deny the person's certification for failing to comply with a railroad operating rule or practice which constitutes a violation under § 245.303(e)(1) through (6) if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the dispatcher's ability to comply with that railroad operating rule or practice.

§ 245.303 Criteria for revoking certification.

(a) It shall be unlawful to fail to comply with any of the railroad rules or practices described in paragraph (e) of this section.

(b) A certified dispatcher who fails to comply with a railroad rule or practice described in paragraph (e) of this section shall have their certification revoked.

(c) A certified dispatcher who is assigned to monitor, pilot, or instruct a dispatcher and fails to take appropriate action to prevent a violation of a railroad rule or practice described in paragraph (e) of this section shall have their certification revoked. Appropriate action does not mean that a supervisor, pilot, or instructor must prevent a violation from occurring at all costs; the duty may be met by warning the dispatcher of a potential or foreseeable violation.

(d) A certified dispatcher who is called by a railroad to perform a duty other than that of a dispatcher shall not have their dispatcher certification revoked based on actions taken or not taken while performing that duty except for violations described in paragraph (e)(7) of this section.

(e) When determining whether to revoke a dispatcher's certification, a railroad shall only consider violations of its operating rules or practices that involve:

(1) Failure to properly issue or apply a mandatory directive when warranted.

(2) Improperly authorizing a train or on-track equipment to enter into an out-of-service or blue flag protected track.

(3) Granting permission for a train or on-track equipment to enter into established RWIC limits without authority or permission from the RWIC.

(4) Removal of blocking devices or established protection of RWIC working limits prior to the RWIC releasing the limits.

(5) Failure to properly apply blocking devices or establish proper protection for specified working limits or movements of trains or on-track equipment.

(6) Granting permission for a train to enter PTC or Cab Signal limits with inoperative or malfunctioning PTC or Cab Signal equipment.

(7) Failure to comply with § 219.101 of this chapter. However, such incidents shall be considered as a violation only for the purposes of § 245.305(a)(2) and (b).

(f) In making the determination as to whether to revoke a dispatcher's certification, a railroad shall only consider conduct described in paragraphs (e)(1) through (6) of this section that occurred within the three years prior to the determination.

(g) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(h) A violation of one or more operating rules or practices described in paragraphs (e)(1) through (6) of this section that occurs during a properly conducted operational compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in § 245.305.

(i) An operational test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under § 217.9 of this chapter, will not be considered a legitimate test of operational skill or knowledge, and will not be considered for revocation purposes.

(j) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 245.305 Periods of ineligibility.

(a) The starting date for a period of ineligibility described in this section shall be:

(1) For a person not currently certified, the date of the railroad's written determination that the most recent incident has occurred; or

(2) For a person currently certified, the date of the railroad's notification to the person that recertification has been denied or certification has been suspended.

(b) A period of ineligibility shall be determined according to the following standards:

(1) In the case of a single incident involving a violation of one or more of the operating rules or practices described in § 245.303(e)(1) through (6), the person shall have their certificate revoked for a period of 30 calendar days.

(2) In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in § 245.303(e)(1) through (6), that occurred within 24 months of each other, the person shall have their certificate revoked for a period of six months.

(3) In the case of three separate incidents involving violations of one or more of the operating rules or practices, described in § 245.303(e)(1) through (7), that occurred within 36 months of each other, the person shall have their certificate revoked for a period of one year.

(4) In the case of four separate incidents involving violations of one or more of the operating rules or practices, described in § 245.303(e)(1) through (7), that occurred within 36 months of each other, the person shall have their certificate revoked for a period of three years.

(5) Where, based on the occurrence of violations described in § 245.303(e)(7), different periods of ineligibility may result under the provisions of this section and § 245.115, the longest period of revocation shall control.

(c) Any or all periods of revocation provided in paragraph (b) of this section may consist of training.

(d) A person whose certification is denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of ineligibility only if:

(1) The denial or revocation of certification in accordance with the provisions of paragraph (b) of this section is for a period of one year or less;

(2) Certification is denied or revoked for reasons other than noncompliance with § 219.101 of this chapter;

(3) The person is evaluated by a railroad officer and determined to have received adequate remedial training;

(4) The person successfully completes any mandatory program of training or retraining, if that is determined to be necessary by the railroad prior to return to service; and

(5) At least one half of the pertinent period of ineligibility specified in paragraph (b) of this section has elapsed.

§ 245.307 Process for revoking certification.

(a) If a railroad determines that a dispatcher, who is currently certified by the railroad, has violated a railroad operating rule or practice described in § 245.303(e), the railroad shall revoke the dispatcher's certification in accordance with the procedures and requirements of this section.

(b) Except as provided for in § 245.115(f), if a railroad acquires reliable information that a dispatcher, who is currently certified by the railroad, has violated a railroad operating rule or practice described in § 245.303(e) or § 245.115(d), the railroad shall undertake the following process to determine whether revocation of the dispatcher's certification is warranted:

(1) The dispatcher's certification shall be suspended immediately.

(2) Prior to or upon suspending the dispatcher's certification, the railroad shall provide the dispatcher with notice of: the reason for the suspension; the pending revocation; and an opportunity for a hearing before a presiding officer other than the investigating officer. This notice may initially be given either orally or in writing. If given orally, the notice must be subsequently confirmed in writing in a manner that conforms with the notification provisions of the applicable collective bargaining agreement. If there is no applicable collective bargaining agreement notification provision, the written notice must be made within four days of the date the certification was suspended.

(3) The railroad must convene the hearing within the time frame required under the applicable collective bargaining agreement. If there is no applicable collective bargaining agreement or the applicable collective bargaining agreement does not include such a requirement, the hearing shall be convened within ten days of the date the certification is suspended unless the dispatcher requests or consents to a delay to the start of the hearing.

(4) Except as provided for in paragraph (c) of this section, the railroad shall provide the dispatcher with a copy of the written information and a list of witnesses the railroad will present at the hearing at least 72 hours before the start of the hearing. If this information was provided by an employee of the railroad, the railroad shall make that employee available for examination during the hearing notwithstanding the terms of an applicable collective bargaining agreement.

(5) Following the hearing, the railroad must determine, based on the record of the hearing, whether revocation of the certification is warranted and state explicitly the basis for the conclusion reached. The railroad shall have the burden of proving that revocation of the dispatcher's certification is warranted under § 245.303.

(6) If the railroad determines that revocation of the dispatcher's certification is warranted, the railroad shall impose the proper period of revocation provided for in § 245.305 or § 245.115.

(7) The railroad shall retain the record of the hearing for three years after the date the decision is rendered.

(c) A hearing required by this section which is conducted in a manner that conforms procedurally to the applicable collective bargaining agreement shall satisfy the procedural requirements of this section.

(d) Except as provided for in paragraph (c) of this section, a hearing required under this section shall be conducted in accordance with the following procedures:

(1) The hearing shall be conducted by a presiding officer who can be any proficient person authorized by the railroad other than the investigating officer.

(2) The presiding officer shall convene and preside over the hearing and exercise the powers necessary to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in dispute.

(3) The presiding officer may:

(i) Adopt any needed procedures for the submission of evidence in written form;

(ii) Examine witnesses at the hearing; and

(iii) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may assist in achieving a prompt and fair determination of all material issues in dispute.

(4) All relevant and probative evidence shall be received into the record unless the presiding officer determines the evidence to be unduly repetitive or have such minimal relevance that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(5) Parties may appear at the hearing and be heard on their own behalf or through designated representatives. Parties may offer relevant evidence including testimony and may conduct such examination of witnesses as may be required for a full disclosure of the relevant facts.

(6) Testimony by witnesses at the hearing shall be recorded verbatim. Witnesses can testify in person, over the phone, or virtually.

(7) The record in the proceeding shall be closed at the conclusion of the hearing unless the presiding officer allows additional time for the submission of evidence.

(8) A hearing required under this section may be consolidated with any disciplinary action or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.

(9) A person may waive their right to a hearing. That waiver shall:

(i) Be made in writing;

(ii) Reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them; and

(iii) Be signed by the person making the waiver.

(e) Except as provided for in paragraph (c) of this section, a decision, required by this section, on whether to revoke a dispatcher's certification shall comply with the following requirements:

(1) No later than ten days after the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision as to whether the railroad is revoking the dispatcher's certification.

(2) The decision shall:

(i) Contain the findings of fact on all material issues as well as an explanation for those findings with citations to all

applicable railroad operating rules and practices;

(ii) State whether the railroad official found that the dispatcher's certification should be revoked;

(iii) State the period of revocation under § 245.305 (if the railroad official concludes that the dispatcher's certification should be revoked); and

(iv) Be served on the dispatcher and the dispatcher's representative, if any, with the railroad retaining proof of service for three years after the date the decision is rendered.

(f) The period that a dispatcher's certification is suspended in accordance with paragraph (b)(1) of this section shall be credited towards any period of revocation that the railroad assesses in accordance with § 245.305.

(g) A railroad shall revoke a dispatcher's certification if, during the period that certification is valid, the railroad acquires information which convinces it that another railroad has revoked the person's dispatcher certification in accordance with the provisions of this section. Such revocation shall run concurrently with the period of revocation imposed by the railroad that initially revoked the person's certification. The requirement to provide a hearing under this section is satisfied when any single railroad holds a hearing. No additional hearing is required prior to a revocation by more than one railroad arising from the same facts.

(h) A railroad shall not revoke a dispatcher's certification if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the dispatcher's ability to comply with the railroad operating rule or practice which constitutes a violation under § 245.303.

(i) A railroad may decide not to revoke a dispatcher's certification if sufficient evidence exists to establish that the violation of the railroad operating rule or practice described in § 245.303(e) was of a minimal nature and had no direct or potential effect on rail safety.

(j) If sufficient evidence meeting the criteria in paragraph (h) or (i) of this section becomes available, including prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section or prior to the convening of the hearing provided for in this section, the railroad shall place the relevant information in the records maintained in compliance with:

(1) Section 245.215 for Class I railroads (including the National Railroad Passenger Corporation), railroads providing commuter service, and Class II railroads; or

(2) Section 245.203 for Class III railroads.

(k) If a railroad makes a good faith determination, after performing a reasonable inquiry, that the course of conduct provided for in paragraph (h) or (i) of this section is warranted, the railroad will not be in violation of paragraph (b)(1) of this section if it decides not to suspend the dispatcher's certification.

Subpart E—Dispute Resolution Procedures

§ 245.401 Review board established.

(a) Any person who has been denied certification, denied recertification, or has had their certification revoked and believes that a railroad incorrectly determined that they failed to meet the certification requirements of this part when making the decision to deny or revoke certification, may petition the Administrator to review the railroad's decision.

(b) The Administrator has delegated initial responsibility for adjudicating such disputes to the Certification Review Board (Board). The Board shall be composed of FRA employees.

§ 245.403 Petition requirements.

(a) To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with this section.

(b) Each petition shall:

(1) Be in writing;

(2) Be filed no more than 120 days after the date the railroad's denial or revocation decision was served on the petitioner, except as provided for in paragraph (d) of this section;

(3) Be filed on *https://www.regulations.gov.*

(4) Include the following contact information for the petitioner and petitioner's representative (if petitioner is represented):

(i) Full name;

(ii) Daytime telephone number; and

(iii) Email address;

(5) Include the name of the railroad;

(6) Contain the facts that the petitioner believes constitute the improper action by the railroad and the arguments in support of the petition; and

(7) Include all written documents in the petitioner's possession or reasonably available to the petitioner that document the railroad's decision.

(c) If requested by the Board, the petitioner must provide a copy of the information under 49 CFR 40.329 that laboratories, medical review officers, and other service agents are required to release to employees. The petitioner must provide a written explanation in response to a Board request if written documents, that should be reasonably available to the petitioner, are not supplied.

(d) The Board may extend the petition filing period in its discretion provided that the petitioner provides good cause for the extension and:

(1) The request for an extension is filed before the expiration of the period provided for in paragraph (b)(2) of this section; or

(2) The failure to timely file was the result of excusable neglect.

(e) A party aggrieved by a Board decision to deny a petition as untimely or not in compliance with the requirements of this section may file an appeal with the Administrator in accordance with § 245.411.

§ 245.405 Processing certification review petitions.

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall be sent to the petitioner (if an email address is provided), petitioner's representative (if any), and the railroad. The acknowledgment shall contain the docket number assigned to the petition and will notify the parties where the petition can be accessed.

(b) Within 60 days from the date of the acknowledgment provided in paragraph (a) of this section, the railroad may submit to FRA any information that the railroad considers pertinent to the petition and shall supplement the record with any relevant documents in its possession, such as hearing transcripts and exhibits, that were not submitted by the petitioner. Late filings will only be considered to the extent practicable. A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number for the petition;

(2) Provide the railroad's email address;

(3) Serve a copy of the information being submitted to the petitioner and petitioner's representative, if any; and

(4) File such information on *https://www.regulations.gov.*

(c) The petition will be referred to the Board for a decision after a railroad's response is received or 60 days from the date of the acknowledgment provided in paragraph (a) of this section, whichever is earlier. Based on the record, the Board shall have the authority to grant, deny, dismiss, or remand the petition. If the Board finds that there is insufficient basis for granting or denying the

petition, the Board may issue an order affording the parties an opportunity to provide additional information or argument consistent with its findings.

(d) When considering procedural issues, the Board will grant the petition if the petitioner shows:

(1) That a procedural error occurred; and

(2) The procedural error caused substantial harm to the petitioner.

(e) When considering factual issues, the Board will grant the petition if the petitioner shows that the railroad did not provide substantial evidence to support its decision.

(f) When considering legal issues, the Board will determine whether the railroad's legal interpretations are correct based on a *de novo* review.

(g) The Board will only consider whether the denial or revocation of certification or recertification was improper under this part and will grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision. For example,the Board will not consider whether the railroad properly applied its own more stringent requirements.

(h) The Board's written decision shall be served on the petitioner and/or petitioner's representative (if any) and the railroad.

§ 245.407 Request for a hearing.

(a) If adversely affected by the Board's decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by § 245.409.

(b) To exercise that right, the adversely affected party shall file a written request for a hearing within 20 days of service of the Board's decision on that party. The request must be filed in the docket on *https://www.regulations.gov* that was used when the case was before the Board.

(c) A written request for a hearing must contain the following:

(1) The name, telephone number, and email address of the requesting party and the requesting party's designated representative (if any);

(2) The name, telephone number, and email address of the respondent;

(3) The docket number for the case while it was before the Board;

(4) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question; and

(5) The signature of the requesting party or the requesting party's representative (if any).

(d) Upon receipt of a hearing request complying with paragraph (c) of this section, FRA shall arrange for the appointment of a presiding officer who shall schedule the hearing for the earliest practicable date.

(e) If a party fails to request a hearing within the period provided in paragraph (b) of this section, the Board's decision will constitute final agency action.

§ 245.409 Hearings.

(a) An administrative hearing for a dispatcher certification petition shall be conducted by a presiding officer, who can be any person authorized by the Administrator.

(b) The presiding officer shall convene and preside over the hearing. The hearing shall be a *de novo* hearing to find the relevant facts and determine the correct application of this part to those facts. The presiding officer may determine that there is no genuine issue covering some or all material facts and limit evidentiary proceedings to any issues of material fact as to which there is a genuine dispute.

(c) The presiding officer may exercise the powers of the Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(d) The presiding officer may authorize discovery of the types and quantities which in the presiding officer's discretion will contribute to a fair hearing without unduly burdening the parties. The presiding officer may impose appropriate non-monetary sanctions, including limitations as to the presentation of evidence and issues, for any party's willful failure or refusal to comply with approved discovery requests.

(e) Every petition, motion, response, or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or representative of record, or by any other person. If signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person subscribing any document constitutes a certification that they have read the document; that to the best of their knowledge, information, and belief, every statement contained in the document is true and no such statements are misleading; and that it is not interposed for delay or to be vexatious.

(f) After the request for a hearing is filed, all documents filed or served upon one party must be served upon all parties. Each party may designate a person upon whom service is to be made when not specified by law, regulation, or directive of the presiding officer. If a party does not designate a person upon whom service is to be made, then service may be made upon any person having subscribed to a submission of the party being served, unless otherwise specified by law, regulation, or directive of the presiding officer. Proof of service shall accompany all documents when they are tendered for filing.

(g) If any document initiating, filed in, or served in, a proceeding is not in substantial compliance with the applicable law, regulation, or directive of the presiding officer, the presiding officer may strike or dismiss all or part of such document, or require its amendment.

(h) Any party to a proceeding may appear and be heard in person or by an authorized representative.

(i) Any person testifying at a hearing or deposition may be accompanied, represented, and advised by an attorney or other representative, and may be examined by that person.

(j) Any party may request to consolidate or separate the hearing of two or more petitions by motion to the presiding officer when they arise from the same or similar facts or when the matters are for any reason deemed more efficiently heard together.

(k) Except as provided in § 245.407(e) and paragraph (s)(4) of this section, whenever a party has the right or is required to take action within a period prescribed by this part, or by law, regulation, or directive of the presiding officer, the presiding officer may extend such period, with or without notice, for good cause, provided another party is not substantially prejudiced by such extension. A request to extend a period which has already expired may be denied as untimely.

(l) An application to the presiding officer for an order or ruling not otherwise specifically provided for in this part shall be by motion. The motion shall be filed with the presiding officer and, if written, served upon all parties. All motions, unless made during the hearing, shall be written. Motions made during hearings may be made orally on the record, except that the presiding officer may direct that any oral motion be reduced to writing. Any motion shall state with particularity the grounds therefor and the relief or order sought and shall be accompanied by any affidavits or other evidence desired to be relied upon which is not already part of the record. Any matter submitted in response to a written motion must be filed and served within 14 days of the

motion, or within such other period as directed by the presiding officer.

(m) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim. The presiding officer shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the presiding officer. The presiding officer may permit oral argument on any issues for which the presiding officer deems it appropriate and beneficial. Any evidence or argument received or proffered orally shall be transcribed and made a part of the record. Any physical evidence or written argument received or proffered shall be made a part of the record, except that the presiding officer may authorize the substitution of copies, photographs, or descriptions, when deemed to be appropriate.

(n) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. Notwithstanding paragraph (m) of this section, all relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(o) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided for in § 209.7 of this chapter;

(3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn, or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(p) The petitioner before the Board, the railroad involved in taking the certification action, and FRA shall be parties at the hearing. All parties may participate in the hearing and may appear and be heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.

(q) The party requesting the administrative hearing shall be the ''hearing petitioner.'' The party that the Board issued its decision in favor of will be a respondent. At the start of each proceeding, FRA will be a respondent as well. The hearing petitioner shall have the burden of proving its case by a preponderance of the evidence.

(r) The record in the proceeding shall be closed at the conclusion of the evidentiary hearing unless the presiding officer allows additional time for the submission of additional evidence. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(s) At the close of the record, the presiding officer shall prepare a written decision in the proceeding. The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis for each, concerning all material issues of fact or law presented on the record;

(2) Shall be served on all parties to the proceeding;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Is not precedential.

§ 245.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal in the presiding officer's docket. The appeal must be filed within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a reply for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may remand, vacate, affirm, reverse, alter, or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.

(f) An appeal from a Board decision pursuant to § 245.403(e) must be filed in the Board's docket within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

Appendix A to Part 245—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

(1) The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of § 245.111 of this chapter. This provision requires that railroads consider the motor vehicle driving record of each person prior to issuing them certification or recertification as a dispatcher.

(2) To fulfill that obligation, a railroad is required to review a certification candidate's recent motor vehicle driving record for information described in § 245.111(m). Generally, that will be a single record on file with the state agency that issued the candidate's current motor vehicle driver's license. However, a motor vehicle driving record can include multiple documents if the candidate has been issued a motor vehicle driver's license by more than one state agency or a foreign country.

(3) The right of railroad workers, their employers, or prospective employers to have access to a state motor vehicle licensing agency's data concerning an individual's driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers, such as railroads, can obtain such data, there are some states where privacy concerns make such access very difficult or impossible. Since individuals are generally entitled to obtain access to their driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places the responsibility on individuals who want to serve as dispatchers to request that their current state motor vehicle licensing agency (or agencies) furnish such data directly to the railroad that is considering certification (or recertification) of the individual as a dispatcher. Depending on the procedures established by the state motor vehicle licensing agency, the individual may be asked to send the state agency a brief letter requesting such action or to execute a state agency form that accomplishes the same effect. Requests for an individual's motor vehicle driving record normally involve payment of a nominal fee established by the state agency as well. In rare instances, when

a certification (or recertification) candidate has been issued multiple licenses, an individual may be required to submit multiple requests.

(4) Once the railroad has obtained the individual's motor vehicle driving record(s), the railroad is required to afford the certification (or recertification) candidate an opportunity to review and comment on the record(s) in writing pursuant to § 245.301 if the motor vehicle driving records contain information that could form the basis for denying the person certification. This opportunity to review and comment must occur before the railroad renders a certification decision based on information in the record(s). The railroad is required to evaluate the information in the certification (or recertification) candidate's motor vehicle driving record(s) pursuant to the provisions of this part.

Appendix B to Part 245—Medical Standards Guidelines

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 245.117 and 245.118.

(2) For any examination performed to determine whether a person meets the visual acuity requirements in § 245.117, it is recommended that such examination be performed by a licensed optometrist or a technician who reports to a licensed optometrist. It is also recommended that any test conducted pursuant to § 245.117 be performed according to any directions supplied by the test's manufacturer and any ANSI standards that are applicable.

(3) For any examination performed to determine whether a person meets the hearing acuity requirements in § 245.118, it is recommended that such examination be performed by a licensed or certified audiologist or a technician who reports to a licensed or certified audiologist. It is also recommended that any test conducted pursuant to § 245.118 be performed according to any directions supplied by the test's manufacturer and any ANSI standards that are applicable.

(4) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

TABLE 1 TO APPENDIX B TO PART 245

Accepted tests	Failure criteria
Pseudoisochromatic Plate Tests	
American Optical Company 1965	5 or more errors on plates 1–15.
AOC—Hardy-Rand-Ritter plates—second edition	Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book).
Dvorine—Second edition	3 or more errors on plates 1–15.
Ishihara (14 plate)	2 or more errors on plates 1–11.
Ishihara (16 plate)	2 or more errors on plates 1–8.
Ishihara (24 plate)	3 or more errors on plates 1–15.
Ishihara (38 plate)	4 or more errors on plates 1–21.
Richmond Plates 1983	5 or more errors on plates 1–15.
Multifunction Vision Tester	
Keystone Orthoscope	Any error.
OPTEC 2000	Any error.
Titmus Vision Tester	Any error.
Titmus II Vision Tester	Any error.

(5) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that ''yellow signals'' do not always appear to be the same. It is not acceptable to use ''yarn'' or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and § 245.117(c)(3).

(6) An examinee who fails to meet the criteria in the chart may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria for serving as a dispatcher. The intent of §§ 245.117(d) and 245.118(d) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely perform as a dispatcher. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request, but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(7) Dispatchers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

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49 CFR Part 246

Certification of Signal Employees; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 246

[Docket No. FRA–2022–0020, Notice No. 4]

RIN 2130–AC92

Certification of Signal Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is prescribing regulations for certification of signal employees, pursuant to the authority granted in section 402 of the Rail Safety Improvement Act of 2008 (RSIA).

DATES: *Effective Date:* The rule is effective July 22, 2024.

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SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AANP—American Association of Nurse Practitioners
AAR—Association of American Railroads
ADA—Americans with Disabilities Act
APTA—American Public Transportation Association
ASLRRA—American Short Line and Regional Railroad Association
BRS—Brotherhood of Railroad Signalmen
CE—Categorical Exclusion
CFR—Code of Federal Regulations
CRB—Certification Review Board
DAC—Drug and alcohol counselor
DOT—United States Department of Transportation
EA—Environmental Assessment
EIS—Environmental Impact Statement
FRA—Federal Railroad Administration
IBEW—International Brotherhood of Electrical Workers
IRFA—Initial Regulatory Flexibility Analysis
ITLC—International Transportation Learning Center
MTA—New York State Metropolitan Transportation Authority
NEPA—National Environmental Policy Act
NPRM—Notice of Proposed Rulemaking
NRC—Network Rail Consulting Inc.
NRCMA—National Railroad Construction and Maintenance Association
NRM—Northwest Railway Museum
OCSR—Oregon Coast Scenic Railroad
OMB—United States Office of Management and Budget
PRA—The Paperwork Reduction Act
PTC—Positive Train Control
PV—Present Value
RIA—Regulatory Impact Analysis
RIN—Regulatory Identification Number
RSAC—Railroad Safety Advisory Committee
RSIA—Rail Safety Improvement Act of 2008
SAP—Substance Abuse Professional
SMART–TD—Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers
STB—The Surface Transportation Board
TTD—Transportation Trades Department, AFL–CIO
U.S.C.—United States Code
UTC—Washington Utilities and Transportation Commission

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I. Executive Summary

Purpose of the Regulatory Action

FRA is requiring railroads to develop FRA-approved programs for certifying signal employees who work on signal systems and signal-related technology on their networks. Pursuant to this rule, railroads are required to have formal processes for training signal employees, as well as verifying that each signal employee has the requisite knowledge, skills, safety record, and ability to safely perform assigned tasks mandated by railroad rules and safety standards and Federal law and regulations prior to certification. In addition, railroads will be required to have formal processes for revoking certification (either temporarily or permanently) for signal employees who violate specified minimum requirements.

FRA is promulgating this regulation in response to section 402 of the RSIA, Public Law 110–432, 122 Stat. 4848, 4884 (Oct. 16, 2008), which required the Secretary of Transportation (Secretary) to submit a report to Congress addressing whether certification of ''certain crafts or classes'' of railroad employees or contractors, including signal employees, was necessary to ''reduce the number and rate of accidents and incidents or to improve railroad safety.'' Section 402 further provides that the Secretary may prescribe regulations requiring the certification of certain crafts or classes if the Secretary determined, pursuant to the report to Congress, that such regulations are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.

The Secretary submitted a report to Congress on November 4, 2015,[1] stating that, based on FRA's preliminary research, signal employees were one of the most viable candidate railroad crafts for certification, particularly with the introduction of Positive Train Control (PTC) technology. Given the safety critical role of signal employees in facilitating safe railroad operations, FRA determined that the number and rate of accidents and incidents would be expected to decrease and railroad safety would be expected to improve if signal employees are required to satisfy certain standards and be certified by each railroad whose signal systems they install, troubleshoot, repair, test, or maintain.

Summary of Major Provisions

This rule requires railroads to develop written programs for certifying individuals who work as signal employees on their territories, and to submit those written certification programs to FRA for approval prior to implementation. FRA will issue a letter to the railroad when it approves a certification program that explains the basis for approval, and a program will not be considered approved until FRA issues the approval letter. Subpart A of this rule contains general provisions, including a formal statement of the rule's purpose and scope.

[1] A copy of this November 4, 2015 Report to Congress has been posted in the rulemaking docket at: *https://www.regulations.gov/document/FRA-2022-0020-0001.*

Subpart B of this rule covers the review and approval process of certification programs, the implementation schedule for this rule, the certification program requirements, and the eligibility determinations a railroad must make to certify a person as a signal employee. Class I railroads (including the National Railroad Passenger Corporation), and railroads providing commuter service, are required to submit their written certification programs to FRA no later than eight (8) months after this rule's effective date. Class II and Class III railroads are required to submit their written certification plans sixteen (16) months after this rule's rule effective date. New railroads that begin operation after the effective date are required to submit their written certification programs to FRA and obtain FRA approval before installing their signal systems and commencing operations. In addition, railroads seeking to materially modify their FRA-approved certification programs must obtain FRA approval prior to modifying their programs.

Railroads are required to evaluate certification candidates in multiple areas, including prior safety conduct as a motor vehicle operator, prior safety conduct as an employee of a different railroad, substance abuse disorders and alcohol/drug rules compliance, and visual and hearing acuity.

The rule also contains minimum requirements for the training provided to candidates for signal employee certification. These requirements are intended to ensure certified signal employees have received sufficient training before they are hired to work on signal systems and signal-related technology. These requirements are also intended to ensure that certified signal employees periodically receive recurring training on Federal laws, regulations, and orders and railroad safety and operating rules, as well as comprehensive training on new signal systems and signal-related technology before they are introduced on the railroads where they work.

Subpart C of this rule addresses how railroads are to administer their signal employee certification programs. With the exception of individuals designated as certified signal employees prior to FRA approval of the railroad's signal employee certification program, this rule prohibits railroads from certifying signal employees for intervals longer than three (3) years. This three-year limitation, which is consistent with the 36-month maximum period for certifying locomotive engineers in 49 CFR 240.217(c) and the 36-month maximum period for certifying conductors in 49 CFR 242.201(c), allows for periodic re-evaluation of certified signal employees to verify their continued compliance with FRA's minimum safety requirements.

Subpart D of this rule addresses the process and criteria for denying and revoking certification. Before a railroad denies an individual certification or recertification, it must provide the certification candidate with the information that forms the basis for the denial decision and give the candidate an opportunity to rebut such evidence. The rule also requires that a railroad make any decision to deny an individual certification or recertification in writing and meet certain requirements.

A railroad can only revoke a signal employee's certification if one of eleven events occurs. Generally, for the first revocable event that is not related to a signal employee's use of drugs or alcohol, the person's certification would be revoked for 30 days. If a person accumulates more of these violations in a given time period, the revocation period (period of ineligibility) becomes longer.

If a railroad acquires reliable information that a certified signal employee has violated an operating rule or practice requiring decertification under this rule, the railroad must suspend the signal employee's certification immediately, while it determines whether revocation is warranted. In such circumstances, signal employees are entitled to a hearing. Similar to a railroad's decision to deny certification, a railroad's decision to revoke a signal employee's certification must satisfy certain requirements. Finally, if an intervening cause prevented or materially impaired a signal employee's ability to comply with a railroad operating rule or practice, the railroad must not revoke the signal employee's certification.

Subpart E of this rule describes the dispute resolution process for individuals wishing to challenge a railroad's decision to deny certification, deny recertification, or revoke certification. This dispute resolution process mirrors the process used for locomotive engineers and conductors under 49 CFR parts 240 and 242, respectively.

Finally, this final rule contains two appendices. Appendix A discusses the procedures that a person seeking certification or recertification should follow to furnish a railroad with information concerning their motor vehicle driving record. Appendix B provides guidance on the procedures railroads should employ in administering the vision and hearing requirements under §§ 246.117 and 246.118.

Benefits and Costs

FRA analyzed the economic impact of this final rule. FRA estimated the benefits of fewer signal employee-caused accidents, and the costs anticipated to be incurred by railroads and the Government.

This rule will help ensure that signal employees are properly trained, are qualified to perform their duties, and meet Federal safety standards. This rule will reduce the likelihood of an accident occurring due to signal employee error. FRA has analyzed accidents over the past 10 years to categorize those where signal employee training and certification would have impacted the accident. FRA then estimated benefits based on that analysis.

The following table shows the estimated 10-year quantifiable benefits of the final rule. The total 10-year estimated benefits would be $2.9 million (PV, 7%) and annualized benefits would be $0.4 million (PV, 7%).

TOTAL 10-YEAR DISCOUNTED BENEFITS

[2020 Dollars]

Category	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Grade Crossing Accidents	1,766,028	2,064,676	251,443	242,043
Train Accidents/Incidents	960,671	1,123,127	136,778	131,665
Business Benefits (Railroad Industry)	53,817	62,917	7,662	7,376
Business Benefits (Government)	87,985	102,863	12,527	12,059

TOTAL 10-YEAR DISCOUNTED BENEFITS—Continued

[2020 Dollars]

Category	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Total	2,868,501	3,353,584	408,410	393,142

This final rule will also provide unquantifiable benefits. FRA has quantified the monetary impact from accidents which is reported on FRA accident forms. However, some accident costs are not required to be reported on FRA accident forms (*e.g.,* environmental impact). That impact may account for additional benefits not quantified in this analysis. If these costs were realized, accidents affected by this rulemaking could have much greater economic impact than estimated quantitative benefit estimates.

There is also a chance of a high impact event due to signal employee error. This could involve fatalities, injuries, and environmental damage, as well as impact railroads, communities, and the public. FRA has not estimated the likelihood of such an event, but this final rule is expected to reduce the risk of an accident of that magnitude.

FRA estimates the 10-year costs of the final rule to be $9.4 million, discounted at 7 percent. The estimated annualized costs are $1.3 million discounted at 7 percent. The following table shows the total costs of this final rule, over the 10-year analysis period.

TOTAL 10-YEAR DISCOUNTED COSTS

[2020 Dollars] [2]

Category	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Development of Certification Program	1,504,135	1,541,874	214,155	180,755
Certification Eligibility Requirements	202,952	227,006	28,896	26,612
Recertification Eligibility Requirements	243,632	310,417	34,688	36,390
Training	2,079,835	2,379,911	296,122	278,998
Knowledge Testing	746,865	898,884	106,337	105,377
Vision and Hearing	1,097,523	1,320,891	156,263	154,849
Monitoring Operational Performance	1,178,812	1,408,753	167,836	165,149
Railroad Oversight Responsibilities	267,530	326,714	38,090	38,301
Certification Card	103,175	124,175	14,690	14,557
Petitions and Hearings	181,733	217,183	25,875	25,460
Government Administrative Cost	1,780,113	2,065,541	253,448	242,144
Total	9,386,306	10,821,350	1,336,399	1,268,592

II. Legal Authority

Pursuant to the Rail Safety Improvement Act of 2008, Public Law 110–432, sec. 402, 122 Stat. 4884 (Oct. 16, 2008) (hereinafter ''RSIA''), the Secretary of Transportation (Secretary) was required to submit a report to Congress addressing whether certification of certain crafts or classes of employees, including signal repair and maintenance employees, was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.[3] If the Secretary determined it was necessary to require the certification of certain crafts or classes of employees to reduce the number and rate of accidents and incidents or to improve railroad safety, section 402 of the RSIA stated the Secretary may prescribe such regulations. The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89. In response to the RSIA, the Secretary submitted a report to Congress on November 4, 2015, stating that, based on FRA's preliminary research, dispatchers and signal employees were potentially the most viable candidate railroad crafts for certification. Based on the analysis in Section III below, the Federal Railroad Administrator has determined that it is necessary to require the certification of signal employees to improve railroad safety.

III. Background

A. Roles and Responsibilities of Signal Employees

Railroad signal employees play an integral role in ensuring the safety of railroad operations, as well as the safety of highway motorists. As noted in comments submitted by the Transportation Trades Department of the AFL–CIO (TTD), signal systems are critical to the operation of every railroad. Signal employees are responsible for the installation, testing, troubleshooting, repair, and maintenance of signal systems, as defined in § 246.7, which railroads utilize to direct train movements. Signal employees must also use specialized test and maintenance equipment to complete safety critical tasks on mechanical, electrical, and electronic signal equipment.

The work performed by signal employees can generally be divided into two categories: construction and maintenance. On larger railroads, some signal employees work in groups (often referred to as ''gangs'') under the direct supervision of an experienced signal employee to construct, install, and upgrade signal systems and signal system subsystems and components. Some signal employees also work in ''gangs'' under the direct supervision of an experienced signal employee to make repairs to the signal system, while other signal employees (often referred to as ''signal maintainers'') are primarily

[2] Numbers in this table and subsequent tables may not sum due to rounding.

[3] *See also* 49 U.S.C. 20103 (providing FRA's general authority to ''prescribe regulations and issue orders for every area of railroad safety'').

tasked with inspecting, testing, troubleshooting, and maintaining signal systems and performing emergency repairs as needed.

The definition of ''signal employee'' for purposes of this rulemaking may differ from the conventional definition of this term. As stated in § 246.1(c), the signal employee certification requirements contained in this part apply to any person who meets the definition of signal employee contained in § 246.7, even if the person has a job classification title other than that of signal employee.

The term ''signal employee'' is defined in § 246.7 as an individual who is engaged in installing, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology. FRA acknowledges that this definition is expansive, as an employee of a railroad (or railroad contractor or subcontractor) may be considered a signal employee for purposes of this rule if they engage in the installation, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology, even if such tasks are not the primary focus of the employee's job. Railroads and other interested parties seeking additional guidance on how the term, ''signal employee,'' has been defined for purposes of this part may find it helpful to review FRA's Technical Bulletin S–19–01, entitled ''Application of the Hours of Service Laws to Positive Train Control Systems'' (TB S–19–01). This technical bulletin provides a general framework for evaluating whether individuals engaged in certain types of tasks are subject to the Federal hours of service law for signal employees (49 U.S.C. 21104).

For example, as noted in FRA's Technical Bulletin S–19–01, employees who are engaged in testing signal system components (even so-called ''self-tests'' of cab signal equipment installed on locomotives) that require the employee to interact with the signal system component, monitor the progress of the test, or interpret the results of the test are considered to be ''signal employees'' who are subject to the Federal hours of service law (49 U.S.C. 21104). Accordingly, even employees of the railroad's mechanical department are considered ''signal employees'' for purposes of this part if they test signal system components that require employee interaction, monitor the progress of the test, or interpret the results of the test.

B. FRA History of Certification

On January 4, 1987, an Amtrak train and Conrail train collided in Chase, Maryland, resulting in 16 deaths and 174 injuries. At the time, it was the deadliest train accident in Amtrak's history. The subsequent investigation by the National Transportation Safety Board concluded that the probable cause of the accident was the impairment of the Conrail engineer who was under the influence of marijuana at the time of the collision.[4]

Following this accident, Congress passed the Rail Safety Improvement Act of 1988, Public Law 100–342, 4, 102 Stat. 624, 625 (1988), which instructed the Secretary to ''issue such rules, regulations, orders, and standards as may be necessary to establish a program requiring the licensing or certification of any operator of a locomotive, including any locomotive engineer.'' On June 19, 1991, FRA published a final rule establishing a certification system for locomotive engineers and requiring railroads to ensure that they only certify individuals who met minimum qualification standards.[5] FRA prescribed a certification system where the railroads issue the certificates as opposed to a government-run licensing system. This final rule, published in 49 CFR part 240 (part 240), created certification requirements for engineers that addressed various areas including vision and hearing acuity; training, knowledge, and performance skills; and prior safety conduct.

Seventeen years later, in 2008, Congress passed the RSIA, which mandated the creation of a certification system for conductors. On November 9, 2011, FRA published a final rule requiring railroads to have certification programs for conductors and to ensure that all certified conductors satisfy minimum Federal safety standards.[6] The conductor certification rule, published in 49 CFR part 242 (part 242), was largely modeled after part 240 with some deviations based on the different job classifications. Part 242 also included some organizational improvements which made the regulation more streamlined than part 240.

C. Statutory Background for Signal Employee Certification

In addition to requiring certification for conductors, the RSIA required the Secretary to submit a report to Congress addressing whether certain other railroad crafts or classes of employees would benefit from certification. Specifically, section 402 of the RSIA required the Secretary to issue a report to Congress ''about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.'' As part of that report, section 402 specifically required the Secretary to consider ''signal repair and maintenance employees'' as one of the railroad crafts for certification.

After identifying a railroad craft or class for which certification is necessary, pursuant to the report to Congress discussed above, section 402 authorized the Secretary to ''prescribe regulations requiring the certification of certain crafts or classes of employees that the Secretary determines . . . are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.''

D. Report to Congress

On November 4, 2015, the Secretary submitted the report to Congress required by section 402(b) of the RSIA. The report stated that, based on FRA's preliminary research, dispatchers and signal repair employees were the most viable candidates for certification, particularly with the introduction of Positive Train Control (PTC) technology. In reaching this determination with respect to signal employees, the Secretary cited a variety of factors.

The report noted that signal employees perform safety-sensitive work as shown by signal employees being covered under the hours of service laws. The report also noted that the greatest proportion of contractors covered under the hours of service laws are signal employees and noted that they tend to switch employers more frequently than other crafts of employees.

FRA did not include data to support the position in its 2015 report to Congress that signal employees of railroad contractors tend to switch jobs more frequently than other crafts of employees. However, given the lack of regulations requiring prior employment background checks, it is relatively easy for signal employees to leave their current employer after committing a rules violation and find work on another railroad.

Another important factor noted in the 2015 report was the nature of the work signal employees perform on wayside signal and train control systems, which are safety-critical for freight and passenger rail operations. The report noted that, in the coming decade, the

[4] Railroad Accident Report: Rear-end Collision of Amtrak Passenger Train 94, the Colonial and Consolidated Rail Corporation Freight Train ENS–121, on the Northeast Corridor, Chase, Maryland, January 4, 1987 (144 Nat'l Transp. Safety Bd. 1988).

[5] 56 FR. 28227 (June 19, 1991).

[6] 76 FR 69801 (Nov. 9, 2011).

rail industry will likely lose many experienced signal employees to retirement, while growth in freight, commuter, and intercity passenger rail will require that more signal employees are hired and trained.

The report also summarized the challenges posed by PTC system implementation, while noting the ''increasingly sophisticated work'' involved in the implementation of complex PTC system technology by signal employees.[7] In particular, the report noted that ''signal employees will be required to differentiate between a vital and non-vital PTC system [8] and to address the technicalities of using standalone or overlay PTC systems.'' [9] This combination of factors led to the report's conclusion that signal employees are a potentially viable candidate craft for certification.

E. RSAC Working Group

In March 1996, FRA established the Railroad Safety Advisory Committee (RSAC), which provides a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a Working Group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task.

On April 21, 2017, a task statement regarding certification of signal employees was presented to the RSAC by email but no vote was taken. On April 24, 2019, the RSAC accepted a task (No. 19–03) entitled, ''Certification of Railroad Signal Employees.'' [10] The purpose of the task was ''[t]o consider whether rail safety would be enhanced by developing guidance, voluntary standards, and/or draft regulatory language for the certification of railroad signal installation, repair, and maintenance workers.''

The Working Group, which included representatives from the Association of American Railroads (AAR), American Public Transportation Association (APTA), American Short Line and Regional Railroad Association (ASLRRA), Brotherhood of Railroad Signalmen (BRS), Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART–TD), International Brotherhood of Electrical Workers (IBEW), Commuter Rail Coalition, and National Railroad Construction and Maintenance Association (NRCMA), held its first and only meeting on September 5, 2019 in Washington, DC. At this meeting, the Working Group reviewed the task statement from the RSAC, discussed some of the safety-critical tasks performed by signal employees, and debated whether certification of signal employees would be beneficial to railroad safety. At the end of the meeting, action items were assigned, and the next meeting was tentatively scheduled for January 2020.

However, on December 16, 2019, the presidents of the American Train Dispatchers Association, BRS, and IBEW (collectively the ''Unions'') requested that both the dispatcher and signal certification RSAC tasks be withdrawn from consideration. The Unions stated that they were involved in numerous activities and were not able to give the task proper attention. AAR and ASLRRA advised the unions that they were not opposed to this request. In response, FRA withdrew the tasks from the RSAC, and the Working Groups became inactive.

F. Public Outreach

In 2021, FRA revisited the issue of establishing certification requirements for signal employees. The agency assembled subject matter experts from FRA, IBEW and BRS to exchange facts or information regarding the tasks performed by signal employees. Those parties met virtually several times between May 5, 2021 and June 30, 2021.

As part of FRA's outreach, a list of tasks performed by signal employees was developed. These tasks generally involved: vital equipment design validation, installation, calibration, testing, maintenance, and repair (interlockings, grade crossings, wayside signal systems, PTC, etc.). FRA reviewed each task to determine whether correctly performing the task was critical to railroad safety; the potential consequences if errors were made while performing the task; and whether there were any recent examples of issues or concerns with respect to the task. After performing this analysis, FRA concluded that the vast majority of tasks performed by signal employees (80–90% of the listed tasks) were critical to railroad safety with potentially catastrophic consequences, such as accidents, injuries, and/or deaths, if the tasks were not performed properly.

During FRA's outreach, the benefits of certification based on the experience of stakeholders with engineer and conductor certification under 49 CFR parts 240 and 242 were also discussed. Some of the main benefits of certification that were identified include:

—Creating a minimum standard for training to ensure that the training encompasses all skills and proficiencies necessary to properly perform all safety-related signal employee functions;

—Establishing a record of safety compliance that will follow a signal employee if the employee wishes to become certified by another railroad, and that can be used to review a signal employee's performance and potential training needs;

—Requiring certain safety checks, which can help identify active substance abuse disorders; and

—Establishing a system for individuals to dispute a railroad's decision to deny or revoke certification with the aim of creating a fair and consistent process for all parties.

Based on these meetings, FRA concluded that requiring certification for signal employees would be an important tool to ensure signal employees performing safety-sensitive tasks are adequately trained and qualified and have a documented record of performance that is accessible to prospective employers.

Following this initial outreach, FRA held a follow-up conversation with BRS and IBEW, on March 3, 2022, and individuals from BRS and IBEW informed FRA of elements that they believed would be beneficial in a signal employee certification program. During this conversation, which was held in videoconference format, FRA asked the attendees to provide individualized feedback on how similar or different a signal employee certification rule should be to FRA's locomotive engineer

[7] *See* 2015 DOT Report to Congress on Certification of Railroad Crafts at 3.

[8] PTC systems vary widely in complexity and sophistication based on the level of automation and functionality they implement, the system architecture used, the wayside system upon which they are based (*i.e.,* non-signaled, block signal, cab signal, etc.), and the degree of train control they are capable of assuming. Vital systems are reliable and built upon failsafe principles, while non-vital systems are reliable but not guaranteed to provide failsafe operation.

[9] *See* 2015 DOT Report to Congress on Certification of Railroad Crafts at 3. An overlay system relies upon and supplements an existing wayside signal system or redundant method of operation. A standalone system replaces the existing method of operation.

[10] At the same meeting, the RSAC also accepted a task (No. 19–02) titled ''Certification of Train Dispatchers.'' A separate RSAC Working Group was formed to address this task, and FRA plans to issue a related rule that would establish certification requirements for dispatchers.

and conductor certification rules found in 49 CFR parts 240 and 242.

In response to that request, FRA heard that the agency needs to ensure that comprehensive training is provided to signal employees, as the current training is inadequate. FRA also heard that railroads are not providing enough training on new equipment and new technology for signal employees. It was also noted that, in some cases, signal employees are being required to use new equipment and new technology without having received any prior training on the equipment or technology.

On March 7, 2022, FRA met with the railroad industry, including Norfolk Southern Railway Company (NS), ASLRRA, and AAR. During this conversation, which was conducted in a videoconference format, FRA also asked for individualized feedback on how FRA's locomotive engineer and conductor certification regulations in 49 CFR parts 240 and 242 could be improved upon with respect to signal employee certification. Specifically, FRA asked for feedback on any regulatory provisions in 49 CFR parts 240 and 242 that, in their experience, may have been difficult to implement, as well as whether FRA should explore any changes to these regulatory provisions.

AAR expressed opposition to FRA's proposal to issue regulations requiring certification of signal employees, arguing that there was not a safety benefit to certification. In addition, NS questioned the need for certification regulations in the absence of any identified gaps in coverage by existing railroad training programs.

ASLRRA expressed concern that FRA's proposal to issue regulations requiring certification of dispatchers and signal employees would result in a big paperwork burden with little benefit. In addition, ASLRRA asserted that most short line railroads do not have signal systems. With respect to grade crossings, ASLRRA asserted that most short line railroads rely on contractors to maintain their grade crossing warning systems.

After this conversation, FRA provided a short list of written questions to AAR and ASLRRA. While AAR did not provide additional feedback in response to FRA's list of questions, ASLRRA responded to FRA's list of written questions by email on April 13, 2022, a copy of which has been placed in the docket.[11]

On March 8, 2022, FRA staff had a follow-up conversation with BRS and IBEW to receive information on the types of errors and grade crossing and signal violations that should result in a railroad revoking a signal employee's certification. During this conversation, which was conducted in a videoconference format, FRA heard that it might be appropriate to revoke a signal employee's certification in response to willful violations.

G. Notice of Proposed Rulemaking

On May 31, 2023, FRA published an NPRM proposing the establishment of signal employee certification and provided commenters 60 days to file comments.[12] On July 5, 2023, FRA extended the comment period by an additional 30 days.[13] On August 22, 2023, FRA extended the comment period again, this time by an additional 15 days until September 14, 2023.[14]

IV. Discussion of General Comments and FRA's Conclusions

FRA received 24 comments on the NPRM and the related Regulatory Impact Analysis (RIA) from State agencies, labor organizations, trade associations, tourist, historic, and excursion railroads, railway museums, consulting firms, a transportation learning center, and a public-interest law firm and policy center. The order of the topics or comments discussed in this document does not reflect the significance of the comment raised or the standing of the commenter. Additionally, this summary of comments provides a general understanding of the overall scope and themes raised by the commenters and gives some specific descriptions to provide context. Not every comment is described in this summary. Comments addressing specific sections of this rule are discussed in the section-by-section analysis below. Comments regarding the proposed RIA are addressed in the RIA to the final rule.

A. Cost-Benefit Analysis/Safety Justification

FRA received several comments related to the costs and benefits of the proposed rule. Comments were received from AAR, ASLRRA, and the Washington Legal Foundation (WLF), each of whom commented that the costs of the proposed rule outweigh the benefits.

AAR and ASLRRA commented on several of FRA's cost estimates for provisions in the proposed rule. AAR and ASLRRA commented that FRA's estimates for the time to develop the certification programs were low. ASLRRA commented that it would take 550 hours to develop a model program and 19 hours per small railroad to implement. For unannounced compliance tests (monitoring operational performance), AAR and ASLRRA estimated that the time per supervisor would be much more than the two hours per year that FRA estimated. Regarding dispute resolution hearings, AAR and ASLRRA commented that the cost assessments for hearings are underestimated and that the actual cost would amount to 20 percent of the total estimated costs of the proposed rule. AAR and ASLRRA also contend that FRA underestimated wage-related costs by using the 2020 railroad wage rates which "do not take into account the 24% wage increase that railroad employees received as part of the 2022 collective bargaining process or the 10.7% increase in Federal government employee pay rates." [15]

FRA also received comments pertaining to the estimated benefits in the RIA associated with the proposed rule. AAR and ASLRRA contend that FRA relied on some incidents that were not caused by signal employee activities and some incidents for which AAR and ASLRRA assert that it would be impossible to draw the conclusion that the incident would have been prevented by a signal employee certification program.

AAR and ASLRRA also contend that there is no safety justification for this rulemaking and asserted, in their comments, that "the last decade was the safest on record for railroads." [16] In support of this assertion, AAR and ASLRRA provided statistics reflecting a reduction in rail accidents since 2000.

Based on ASLRRA's comment regarding the time to develop a certification program, FRA has revised the estimated time for ASLRRA to develop a model program to 550 hours and increased the estimated time for small railroads to implement a program from 8 hours to 15 hours. FRA has now accounted for only one template program produced by ASLRRA. Holding companies will likely use the template program developed by ASLRRA, instead of producing their own template, as discussed in the RIA associated with the NPRM.

FRA also reassessed the costs for petitions and hearings based on comments from AAR and ASLRRA. The

[11] A record of public contact summarizing this meeting has been posted in the rulemaking docket at: *https://www.regulations.gov/document/FRA-2022-0020-0003.*

[12] 88 FR 35632 (May 31, 2023).

[13] 88 FR 42907 (July 5, 2023).

[14] 88 FR 57044 (Aug. 22, 2023).

[15] FRA–2022–0020–0035.

[16] Ibid.

categories of employees have been revised and estimates have been increased. FRA determined these estimates by looking at the number of petitions and hearings associated with the conductor and engineer certification programs. This baseline was then adjusted for the population size of signal employees. Additionally, Government costs for petitions and hearings have been increased and now include more categories of employees involved in the process.

With respect to AAR and ASLRRA's comment that the time estimate for unannounced compliance tests is too low, FRA has revised its estimate for monitoring operational performance. FRA estimates that each signal employee will require 17 minutes per year for unannounced compliance tests. This revised estimate reflects 15 minutes of additional tasks that would not have been performed otherwise and 2 minutes for documentation.

As for AAR and ASLRRA's comments on the 2020 wage rates used in the NPRM, FRA notes that the wage rates used during NPRM drafting were the most recently available data, as provided by the Surface Transportation Board's (STB) wage data series and General Schedule (GS) pay scales.

With respect to AAR and ASLRRA's comments on FRA's estimate of benefits in the RIA on the proposed rule, FRA has decreased the number of activation failures from 45 (as stated in the NPRM RIA) to 41.5. In addition, FRA adjusted the number of train accidents from 77 to 75 to align with the FRA supplemental data report to the NPRM RIA.[17]

Turning to the contention from AAR and ASLRRA that there is no safety justification for this rule, FRA disagrees with the premise that because railroad safety has improved over the last 20 years, the agency does not need to take actions that could further improve safety. Moreover, the associations neglected to mention in their comments that one of the changes in the railroad industry over the past few decades has been the introduction of certification requirements. The locomotive engineer certification requirements in part 240 went into effect in 1991,[18] and the conductor certification requirements in part 242 became effective just over a decade ago in 2012.[19] Thus, it stands to reason that certification has been one of the factors that has improved railroad safety in recent decades and instituting such requirements for signal employees could lead to similar improvements in the future.

A more detailed response to these comments is, however, provided in the RIA.

B. RSIA Authority

In their comments on the proposed rule, AAR and ASLRRA challenge FRA's assertion that section 402 of the RSIA authorized the Secretary to prescribe regulations requiring the certification of signal employees. AAR and ASLRRA assert that Congress only authorized the Department to issue regulations requiring certification if the Secretary determined in a report to Congress that regulations are ''necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.'' [20] AAR and ASLRRA contend the Secretary failed to make such a determination in the 2015 report to Congress.

While section 402 of the RSIA required the Secretary to issue a report to Congress ''about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety,'' it did not require the Secretary to make an official determination in this report that the issuance of signal employee certification regulations was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety, as a necessary precondition to the initiation of this rulemaking.

Section 402 of the RSIA authorizes the Secretary (and by delegation, FRA) to prescribe regulations requiring the certification of certain crafts or classes of railroad carrier employees (or railroad carrier contractor or subcontractor employees) ''pursuant to'' the report to Congress that was required by section 402(b) of the RSIA. The phrase, ''pursuant to,'' is defined to mean ''in a way that agrees with or follows (something).'' [21] Thus, in section 402 of the RSIA, Congress authorized FRA to prescribe regulations that are consistent with the 2015 report to Congress. Moreover, FRA notes that it has broad authority to ''prescribe regulations and issue orders for every area of railroad safety,'' including this regulation.[22]

C. Role of Third Parties

Consistent with FRA's engineer and conductor certification regulations, this final rule requires railroads to develop and submit certification programs to FRA for approval and then implement their FRA-approved certification programs. However, FRA received multiple comments urging FRA to clarify how signal employee certification programs will be implemented for the employees of signal contractors.

The International Transportation Learning Center (ITLC) urged FRA to implement a process that allows railroads to use model programs in a manner similar to the existing process established pursuant to FRA's training regulations in part 243 of this chapter. In contrast, AAR and ASLRRA submitted comments asserting that FRA should authorize contractors and subcontractors to certify their own employees. AAR and ASLRRA asserted that locomotive engineers and conductors are not a useful comparison when considering this issue because Class I railroad engineers and conductors are almost uniformly company employees. AAR and ASLRRA asserted that Class I railroads make far greater use of contractors in the context of signal systems, as railroads typically engage contractors to perform temporary or intermittent signal work, such as manufacturing signal bungalows in a shop environment and for field work like installing signal mast foundations. Then, once the project is complete, AAR and ASLRRA asserted that the contractor and the contractor's employees will move on to a new project, possibly on a different railroad. Therefore, AAR and ASLRRA concluded that requiring railroads to certify signal employees employed by signal contractors will be inefficient and result in significant administrative burdens for railroads.

With respect to short line railroads, AAR, ASLRRA, and the National Railroad Construction and Maintenance Association (NRCMA) submitted comments asserting that many short line railroads use contractors extensively for signal work because they do not have the in-house expertise to otherwise manage signal maintenance. AAR and ASLRRA noted that signal contractors often provide signal maintenance for dozens of short lines at the same time. Therefore, AAR and ASLRRA asserted that it would be infeasible and an inefficient waste of resources for dozens of railroads to potentially certify the same individual in any given period. In addition, NRCMA asserted that, while

[17] FRA, ''Certification of Signal Employees Notice of Proposed Rulemaking: Supplemental Data to the Regulatory Impact Analysis,'' July 2023, *https://www.regulations.gov/document/FRA-2022-0020-0010.*

[18] 56 FR 28227, 28228 (June 19, 1991).

[19] 76 FR 69802 (Nov. 9, 2011).

[20] Rail Safety Improvement Act of 2008, Public Law 110–432, section 402, 122 Stat. 4848, 4884 (2008).

[21] *www.britannica.com.*

[22] 49 U.S.C. 20103. The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89.

many of FRA's regulations hold a railroad responsible for the actions of an individual performing tasks in accordance with the regulation, no other FRA regulation requires railroads to determine whether a non-employee has the stated qualifications to perform such tasks.

As noted in the proposed rule, especially with respect to Class I, Class II, and commuter railroads, the railroad is generally most knowledgeable about the signal systems and signal-related technology that have been deployed on their territories. Therefore, Class I, Class II, and commuter railroads are best suited to develop certification programs to ensure signal employees tasked with installing, testing, repair, or maintenance of their signal systems and signal-related technology have been properly trained and qualified on such systems and technology. However, railroads are encouraged to work with any signal contractors they hire to obtain records for the contractor's employees that will assist the railroad in making the signal employee certification determinations required by this part.

There are a number of provisions in this final rule which are intended to reduce the burdens associated with developing signal employee certification programs. As noted in the section-by-section analysis of § 246.207, parent companies can assist subsidiary railroads with compliance with this final rule by developing and submitting signal employee certification programs for one or more of their subsidiary railroads to FRA for review and approval. For example, a parent company can submit one signal employee certification program to FRA for multiple subsidiary railroads. In this scenario, the parent company must identify and address all variances associated with each subsidiary railroad that will be covered by the certification program developed by the parent company and submitted by the parent company to FRA for approval. After FRA approves the signal employee certification program, § 246.207 allows either the parent company or the subsidiary railroad to issue signal employee certificates to the signal employees of each subsidiary railroad that is covered by the parent company's certification program.

In addition, to ease the burden of developing signal employee certification programs, especially with respect to Class III railroads, this final rule allows railroads to choose between conducting their own training for signal employees, hiring a third party to provide training to the railroad's signal employees, or using a training program developed by a third party (including a parent company). NRCMA asserted in their comments that signal contractors have expertise in the equipment they install and maintain and that they are well-situated to develop a training program to address particular safety issues that may arise in the course of their work. FRA acknowledges that some signal contractors may, in fact, be well-situated to develop training programs for their signal employees. Therefore, some railroads may choose to hire signal contractors who have their own in-house signal employee training programs. Railroads that adopt this approach should, however, keep in mind that most, if not all, existing signal employee training programs which have been approved by FRA pursuant to 49 CFR part 243 will need to be revised to comply with the training and knowledge testing requirements in this part that specifically apply to signal employees. In addition, the operational performance monitoring requirements in this part must be performed by the certifying railroad.

However, if a railroad chooses to hire a third party to provide training or use a training program developed by a third party, the third-party training program must fit the railroad's specific operating environment and address any unique signal system equipment or signal-related technology (or any unique deployment of signal system equipment or signal-related technology) on the railroad's territory.

Ultimately, with respect to railroads who hire signal contractors to perform work on their signal systems and signal-related technology, employees of signal contracting companies must be certified by the railroad before the railroad allows them to work on its signal systems and signal-related technology, unless they are assigned to work under the direct and immediate supervision of a mentor or qualified instructor. As stated in § 246.124(b), railroads are responsible for ensuring that certified signal employees install, test, maintain, and repair their signal systems and signal-related technology.

D. Interaction With Other FRA Regulations

As stated in the 2015 DOT Report to Congress on the Certification of Railroad Employees, the purpose of certification is to document and verify that the holder of the certificate has achieved certain training and proficiency and to create a record of safety compliance infractions that prospective employers can review when hiring experienced employees. While developing this rule, FRA has been mindful of other regulations that may touch upon topics covered in this rule, including FRA's training, qualification, and oversight regulations in 49 CFR part 243 (part 243); railroad safety risk reduction programs (SSP/RRP) in 49 CFR parts 270 and 271 (parts 270 and 271); and fatigue risk management programs (FRMP) in parts 270 and 271. However, FRA finds that this rule would complement, rather than duplicate, those regulations.

AAR and ASLRRA disagree. In their comments on the proposed rule, AAR and ASLRRA contend that the gaps in FRA's regulations which this rule is trying to fill are either non-existent or immaterial. AAR and ASLRRA assert that there is no safety basis for layering new certification requirements on top of FRA's training, qualification, and oversight requirements in part 243 and the railroad safety risk reduction program requirements in parts 270 and 271. In addition, AAR and ASLRRA specifically assert that there is significant overlap between this rule and part 243.

In support of their argument, AAR and ASLRRA point to § 246.119, which requires railroads to provide training on railroad safety and operating rules, as well as training on the signal systems and signal-related technology deployed on their networks to their signal employees. AAR and ASLRRA assert that this provision overlaps and potentially conflicts with § 243.101(c)(5), which states that the employer must determine how training ''shall be structured, developed, and delivered.'' AAR and ASLRRA also assert that § 246.119 overlaps and potentially conflicts with the stated purpose of part 243 of this chapter ''to ensure that any person employed by a railroad or a contractor of a railroad as a safety-related railroad employee is trained and qualified to comply with any relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.''

As an initial matter, AAR and ASLRRA's narrative that this rule is duplicative of parts 243, 270, and 271 appears to be contradicted by congressional direction. As they note in their joint comment, FRA issued the training regulations in part 243, the SSP regulations in part 270, and the RRP regulations in part 271 because of a statutory mandate in the RSIA. However, in the same law, Congress explicitly permitted requiring the certification of certain crafts if the Secretary determined it was necessary

to improve railroad safety. Had Congress determined that certification requirements were duplicative of what was already mandated by the RSIA, it would not have required the Secretary to study whether other crafts or classes of employees could benefit from certification or given the Secretary the statutory authority to issue additional certification regulations.

Turning to any overlap between this rule and part 243, FRA stands by its position proffered in the NPRM that this rule complements, and does not duplicate, part 243. This rule builds off the initial performance skill evaluations required in part 243 by mandating that certified signal employees also receive an unannounced compliance test each calendar year to ensure that signal employees continue to safely perform their duties after their initial certification. Part 243 has no such continuing compliance testing requirement. While 49 CFR 243.205 requires employers to perform periodic oversight tests and inspections to determine whether their employees are complying with Federal railroad safety laws and regulations, the rule does not require that all employees receive such tests and inspections. In fact, under part 243, an employee could work for decades without being tested or inspected. Therefore, § 246.123 fills a significant gap in FRA's training regulations.

Also, as noted in the NPRM, part 243 does not require railroads to have formal processes in place for promptly removing signal employees from service if they violate one or more basic regulatory standards that could have a significant negative impact on the safety of rail operations. AAR and ALSRRA failed to address this fact in their comment. Part 246 complements part 243 by mandating that railroads remove signal employees from service if they commit one of the safety violations enumerated in § 246.303(e). This rule also requires railroads to perform certain safety checks before certifying a person as a signal employee. These safety checks pertain to a person's prior safety conduct, both working on railroads and as a motor vehicle operator; their history of substance abuse disorders; and their visual and hearing acuity. These are basic safety requirements that are not addressed in part 243. Thus, FRA does not find significant overlap between this rule and part 243.

AAR and ASLRRA also contend ''the proposed rule would cast aside the carefully considered risk analysis conducted through the [system safety/risk reduction programs] in favor of an approach that would have railroads potentially focus on lower priority risks associated with signal employees, not because it is an effective safety management tool, but solely because this rulemaking would require it.'' [23] AAR and ASLRRA assert that all Class I railroads have submitted RRPs and received approval from FRA. If all railroads with passenger rail operations that operate intercity or commuter service have also submitted SSPs and received FRA approval, AAR and ASLRRA estimate that SSP/RRPs could cover more than 83% of the line-haul mileage and 95% of workers in the rail industry.

However, even if a railroad has a railroad safety risk reduction program through which it identifies the risks associated with installing, testing, maintaining, and repairing signal systems, the railroad can decide not to implement mitigations to eliminate or reduce those specific risks. Whether a railroad is required to have a program that mitigates risks associated with signal systems will depend on how the railroad prioritizes risks for mitigation and how effectively that mitigation would promote continuous safety improvement, as compared to mitigation of other identified hazards and risks. Even if signal systems are identified as a risk, a railroad may not be required by its risk reduction program to implement mitigations to eliminate or reduce that risk.

Moreover, FRA disagrees with AAR and ASLRRA's assertion that this rulemaking ''cast[s] aside the carefully considered risk analysis conducted through the [system safety/risk reduction programs] . . . .'' [24] Nothing in this rule obviates a railroad's responsibilities under parts 270 and 271. Railroads are expected to continue to perform the risk analysis and the necessary mitigations to comply with parts 270 and 271, while also implementing a signal employee certification program. This final rule does not duplicate existing FRA regulations or hinder railroads from complying with them. To the contrary, part 246 complements FRA's existing regulations and will help promote railroad safety.

E. Confidential Close Call Reporting System

APTA and MTA each commented on the potential interaction between part 246 and the Confidential Close Call Reporting System (C³RS), an FRA-sponsored program that allows railroad employees reporting close calls to receive certain protections, which currently includes protection from decertification for locomotive engineers and conductors. Each C³RS program is established through an Implementing Memorandum of Understanding (IMOU) signed by FRA and the participating railroad and labor organization(s). Under the current process, the participating railroad submits to FRA a petition to waive specific part 240 and/or part 242 requirements necessary to implement the IMOU's decertification protections. A waiver granted by FRA then incorporates the IMOU's protections by reference. APTA and MTA request that FRA add language to this regulation which would state that those railroads with existing C³RS programs with part 240 and 242 waivers do not have to similarly apply for a waiver of part 246, as their C³RS protections should automatically be applied to part 246 revocable events. APTA and MTA also request that FRA identify in the rule whether any revocable events for signal employees will not be afforded C³RS protections.

While FRA appreciates the commenters' desire for a more streamlined C³RS process, their request is beyond the scope of the NPRM in this proceeding and risks introducing inconsistency and confusion into the C³RS implementation process. Specifically, addressing C³RS in this rule would treat signal employees differently than locomotive engineers and conductors, who receive C³RS decertification protection only pursuant to part 240/242 waivers. The proposed approach would also treat signal employees at new C³RS programs differently, as railroads joining C³RS after the publication of the rule would still have to file a part 246 waiver petition. This inconsistency could create confusion and lead to signal employees at C³RS-participating railroads being uncertain about whether they were protected by the terms of a waiver or by C³RS-related provisions in part 246 (particularly signal employees hired after the date of this final rule who would not necessarily know when their railroad implemented C³RS for signal employees). Such confusion would be compounded if this rule specified which decertifiable events were not afforded C³RS protections, as any such regulatory provision could differ substantively from the provisions of an applicable IMOU and waiver.

Confusion is further risked because only some existing C³RS IMOUs cover signal employees, not all. Using part 246 to provide C³RS decertification

[23] Comment submitted by the AAR and ASLRRA, Docket no. FRA–2022–0020–0035, p. 24.

[24] Ibid.

protection to signal employees at railroads with ''existing'' C³RS programs could therefore be particularly confusing for signal employees at railroads with existing C³RS programs that do *not* currently include signal employees. Such signal employees may mistakenly believe that they are covered by C³RS simply through the action of part 246, not realizing that they lack protection due to the absence of an IMOU that applies to them.

Overall, FRA believes that to promote signal employee confidence in C³RS reporting, signal employees must be certain about the decertification protection they will receive. Such confidence is best promoted by a clear understanding that all signal employees may only report pursuant to an IMOU and waiver that specifically apply to their railroad, rather than having some signal employees protected by separate provisions in part 246, depending on whether they were covered by a C³RS program at the time the final rule is published.

FRA also notes that RSAC has established a C³RS Working Group tasked, in part, with examining how C³RS could be expanded industry-wide without a separate waiver required for each participating railroad.[25] Instead of addressing C³RS in this rule, FRA finds it preferable to allow the RSAC C³RS Working Group to perform its work and to apply any RSAC-recommended improvements consistently to locomotive engineers, conductors, signal employees, and any other certified craft through a future rulemaking or some other means. In the meantime, any railroad that already has a C³RS program that applies to signal employees will need to file a request to modify its waiver if the railroad would like the program's decertification protections to apply to its signal employees. Likewise, a railroad that is not currently participating in C³RS (or a railroad that has a C³RS program, but one that does not apply to its signal employees) will need to file a petition for relief if the railroad decides to implement a C³RS program covering signal employees.

F. PTC

Positive train control (PTC) systems provide an additional layer of safety to existing signal systems, many of which have been place for many decades. PTC systems are also interoperable with each other, as well as with existing signal systems. In their comments on the proposed rule, AAR and ASLRRA assert that PTC implementation has not increased the complexity of the work performed by signal employees. Instead, AAR and ASLRRA assert that the work of signal employees has become less complex because installing, repairing, and maintaining signal systems has become more simplified and more efficient as microprocessors monitor the health of the system and provide automated alerts. Accordingly, AAR and ASLRRA assert that the implementation of PTC systems does not provide a justification for this rule.

FRA disagrees with this assertion. Signal employees need to understand the relationship between signal and PTC systems and the communication medium and how these systems operate, function, and react to a myriad of circumstances. Signal systems and PTC systems are also continually upgraded, so the development and implementation of these increasingly complex systems need to be properly understood by signal employees who install, troubleshoot, test, maintain, and repair them.

V. Section-by-Section Analysis

This section responds to public comments and identifies changes made from the regulatory provisions as proposed in the NPRM. Accordingly, provisions that received no comment and are otherwise being finalized as proposed are not discussed below.

Subpart A—General

Subpart A of this rule contains general provisions, including a formal statement of the rule's purpose and scope. This subpart also provides that the rule does not constrain the ability of a railroad to prescribe additional or more stringent requirements for its signal employees that are not inconsistent with this final rule.

Section 246.3 Application and Responsibility for Compliance

The extent of FRA's jurisdiction, and the agency's exercise of that jurisdiction, is well-established. *See* 49 CFR part 209, app. A. This application and responsibility for compliance section is consistent with FRA's *Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws* in appendix A to 49 CFR part 209 (Policy Statement).

This section, derived from 49 CFR 240.3 and 242.3, provides that this final rule applies to all railroads with four exceptions. Paragraph (a)(1) of this section notes that this rule does not apply to railroads that do not have a signal system, as defined in § 246.7.

The second and third exceptions apply to rail operations on tracks that are not part of the general railroad system of transportation. Paragraph (a)(2) contains an exception for rail operations that occur within the confines of industrial installations commonly referred to as ''plant railroads'' and typified by operations such as those in steel mills that do not go beyond the plant's boundaries and that do not involve the switching of rail cars for entities other than themselves.

Paragraph (a)(3) contains an exception for ''tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation,'' as defined in § 246.7. This reflects a change from the proposed rule, in which paragraph (a)(3) would have excluded tourist, scenic, historic, and excursion operations that are not part of the general railroad system of transportation, if they are deemed to be ''insular.''

As explained in FRA's *Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws* in appendix A to 49 CFR part 209 (Policy Statement), FRA considers a railroad to be ''insular'' if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of a tourist operation or an affiliated entity, or a trespasser) would be affected by the operation. A railroad is not considered insular if one or more of the following exists on its line: (a) A public highway-rail grade crossing that is in use; (b) an at-grade crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; or (d) a common corridor with a railroad (*i.e.,* its operations are within 30 feet of those of any railroad. Therefore, for example, a tourist railroad that operates outside the general railroad system of transportation yet operates over one or more public highway-rail grade crossings, would have been required by the proposed rule to comply with these regulatory requirements for signal employees.

FRA received multiple comments on paragraph (a)(3) in the proposed rule from tourist, scenic, historic, and excursion operations, including the Monticello Railway Museum, the Colorado Railroad Museum, the Oregon Coast Scenic Railroad, the Durango and Silverton Narrow Gauge Railroad, the Great Smoky Mountains Railroad, and the Northwest Railway Museum, as well as an association (HeritageRail Alliance, Inc.) and a consultant (George Hardy Consulting). All commenters expressed support for excluding all tourist, scenic, historic and excursion operations that operate outside the general railroad

[25] See Task No. 2022–03.

system from the scope of this rule—regardless of whether the tourist, scenic, historic, and excursion operation is deemed to be insular or not.

Therefore, FRA took a closer look at tourist, scenic, historic, and excursion operations that operate outside the general railroad system of transportation. According to FRA's records, out of 818 railroads nationwide, there are 34 tourist, scenic, historic, and excursion operations operating outside the general railroad system of transportation. FRA's records also indicate that these tourist, scenic, historic, and excursion operations maintain active warning devices at approximately 105 grade crossings (a small percentage of the 70,289 highway-rail grade crossings nationwide that are equipped with active warning devices).

Asserting that excursion and heritage railways have traditionally relied on volunteer and part-time workers located in their host community to perform signal work, the Northwest Railway Museum commented that the added burden of medical exams, drug testing, certification training, and the review of signal employee driving records may result in smaller entities having to transition to contract signal maintainers. The Northwest Railway Museum and the Oregon Coast Scenic Railroad commented that the transition to contract signal maintainers may result in the unintended consequence of reducing the timeliness of repairs, as contract signal maintainers could be located two or more hours away. The Oregon Coast Scenic Railroad asserted that a highway-rail grade crossing could remain out of service for a lengthy period of time while a tourist railroad arranges to bring in an expensive outside contractor for a repair that previously would have had the crossing back in service within an hour.

Therefore, after taking a closer look at tourist, scenic, historic, and excursion operations that operate outside the general railroad system of transportation, and considering the comments that were submitted to FRA by tourist, scenic, historic, and excursion operations that may be affected by this rulemaking, FRA has excluded these operations from the scope of this final rule. This is consistent with FRA's Policy Statement, which excludes tourist, scenic, historic, and excursion operations from all but a limited number of Federal railroad safety laws, regulations, and orders (including FRA regulations governing alcohol and drug testing in 49 CFR part 219 and employee training plans in 49 CFR part 243).

The fourth exception, in paragraph (a)(4), applies to rapid transit operations in an urban area that are not connected to the general railroad system of transportation. It should, however, be noted that FRA does exercise jurisdiction over some rapid transit type operations, given their links to the general railroad system of transportation, such as rapid transit operations conducted on track used for freight, intercity passenger, or commuter passenger railroad operations during a block of time when a general system railroad is not operating (temporal separation). FRA specifically intends to have this rule apply to those rapid transit operations.

Paragraph (b) is intended to clarify that any person, as defined in § 246.7 (including a railroad employee or employee of a railroad contractor or subcontractor) who performs a function required by this part will be held responsible for compliance.

Section 246.5 Effect and Construction

This section is derived from 49 CFR 240.5 and 242.5. While FRA has not revised the language in this section that was proposed in the NPRM, FRA would like to provide clarification in response to comments from the AAR and ASLRRA asserting that FRA fails to understand this final rule will require the altering of existing collective bargaining agreements. Paragraph (a) does not state that collective bargaining agreements will not be altered as a result of this new rule. To the contrary, FRA understands that, due to new requirements in this rule, collective bargaining agreements may need to be modified to reflect the training and qualification requirements of the rule. FRA acknowledges this fact, but this rule allows for mentoring so individuals can obtain new signal employee positions and be mentored until they become qualified on the railroad's signal system and signal-related technology. Paragraph (a) of this section simply acknowledges that the term ''signal employee'' is defined in this final rule to cover persons who engage in certain tasks that affect railroad signal systems and signal-related technology as defined in § 246.7. However, railroads and labor organizations may use job classification titles other than ''signal employee'' for persons who engage in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems and signal-related technology as defined in § 246.7, and this final rule does not affect the use of such job classification titles in collective bargaining agreements.

Section 246.7 Definitions

This section defines a number of terms that have specific meaning in this part. However, consistent with FRA's approach in drafting this section-by-section analysis, definitions that received no comment and are being finalized as proposed are not discussed in this section.

The American Association of Nurse Practitioners (AANP) submitted comments on the definition of ''medical examiner'' in the proposed rule. Noting that approximately 70% of all nurse practitioner graduates deliver primary care, AANP requested that FRA revise the definition of ''medical examiner'' to include nurse practitioners and thereby authorize them to make determinations on signal employees' certification, recertification, vision acuity and hearing acuity. AANP asserted that the definition of ''medical examiner'' in the proposed rule was based on FRA's locomotive engineer certification regulations in 49 CFR part 240, which are now 32 years old, and not reflective of the current practice environment where nurse practitioners provide a substantial portion of care.

While FRA has not revised the definition of ''medical examiner'' to specifically include nurse practitioners, FRA clarifies that if a nurse practitioner is a licensed or certified technician, FRA's regulations in 49 CFR parts 240 and 242 (and this final rule) allow the nurse practitioner to perform the vision and hearing examinations required in those parts (and in this rule). However, given the complex nature of this issue and FRA's lack of regulatory requirements for medical examiners, the question of whether nurse practitioners should be allowed to serve as medical examiners (and if so, whether they should be required to comply with specific regulatory or industry standards) is best addressed in a future rulemaking during which comments can be solicited specifically on this issue. Accordingly, only a doctor of medicine or doctor of osteopathy is authorized by this final rule to conduct a medical evaluation to determine whether a person can safely work as a certified signal employee if the person fails the vision or hearing acuity examination. FRA has, however, revised the last sentence of this definition by changing ''employee'' to ''individual'' to reflect the fact that railroad medical examiners will be asked to conduct medical evaluations of railroad employees, as well as other individuals seeking signal employee certification or recertification.

In this part, *mentor* is defined as a certified signal employee who has at

least one year of experience as a certified signal employee. For purposes of this part, a mentor provides direct and immediate supervision over the work of one or more signal employees. In other words, FRA views a mentor as a certified signal employee with current, relevant experience who can be counted on to impart knowledge and demonstrate safety-related tasks through on-the-job training. Unlike qualified instructors, mentors are generally not directly involved in testing or making certification decisions.

BRS and the SMART–TD commented on the definition of ''mentor'' in the proposed rule and recommended that, after the first year of implementing this final rule, mentors should be required to have at least three years of experience working with sophisticated signal systems. TTD and IBEW submitted similar comments. TTD expressed concern that one year of experience does not provide enough time for an employee to demonstrate real proficiency in the signal craft, while IBEW commented that mentors should have no less than three years of experience working as a certified signal employee and should be chosen in concurrence with the applicable designated employee representative. In contrast, AAR and ASLRRA commented that FRA should only require signal employee certification, instead of requiring mentors to be certified signal employees and also have at least one year of experience as a certified signal employee. Otherwise, AAR and ASLRRA point out that the experience requirements for mentors are more stringent than the experience requirements for qualified instructors.

FRA agrees that it would, in most cases, be beneficial for mentors to have more than one year of signal employee experience and encourages the selection of mentors with additional years of experience in such cases. FRA believes it is important to have individuals who are comfortable with the signal systems and signal-related technology deployed on the railroad provide direct and immediate supervision of the tasks performed by uncertified persons on such systems and devices.

However, FRA does not have sufficient data to quantify the potential impact on rail safety of having signal employees with at least three years of signal employee experience serve as mentors, as opposed to having signal employees with between one to three years of signal employee experience, serve in this role. Accordingly, FRA has retained the requirement that mentors have at least one year of certified signal employee experience in this final rule.

FRA has not, however, revised the definition of mentor to require concurrence by labor organizations in the selection of individuals to serve as mentors. Concurrence by labor organizations is beneficial for qualified instructors because qualified instructors participate in the certification process by confirming that on-the-job proficiency and qualification on the railroad's signal system and signal-related technology has been demonstrated. FRA does not, however, anticipate that mentors will be tasked by railroads with evaluating certification candidates. Therefore, concurrence by labor organizations in the selection of mentors seems unnecessary.

BRS and TTD also commented that use of the terms ''oversight'' and ''supervision'' in the same sentence in the definition of ''mentor'' in the proposed rule may cause confusion. To avoid confusion, BRS and TTD recommended that FRA clarify that oversight can be provided by a mentor or supervisor. BRS and TTD explained that, by making this change, the roles of both mentor and supervisor will be explicitly acknowledged and there will be clearer understanding of the certified signal employee's responsibilities when working on unfamiliar equipment.

However, after considering BRS and TTD's comments on this issue, FRA revised the definition of ''mentor'' to clarify that mentors are required to provide direct and immediate supervision of the person(s) they are mentoring. As reflected in § 246.124, mentors are held responsible for the work performed by the person(s) working under their direct and immediate supervision. While the verb ''oversee'' is defined in the Britannica Dictionary as ''to watch and direct (an activity, a group of workers, etc.) in order to be sure that a job is done correctly,'' [26] mentors are held responsible in this final rule for closely supervising the work performed by the person(s) they are mentoring. Therefore, the definition of ''mentor'' has been revised in the final rule to provide this clarification.

A definition of ''qualified'' has been added to this final rule, which is similar to definition of this term in parts 240 and 242 of this chapter. Use of ''qualified'' as defined in this section is intended to reflect that the railroad's instruction and training program not only imparted knowledge of how to perform a task, but also sufficiently prepared the person to perform the task proficiently. For example, a signal employee qualified on a specific type of signal system equipment should have received classroom training on how to perform required tasks on the signal system equipment, as well as on-the-job training on how to perform those required tasks proficiently. Without both instruction and hands-on practice performing required tasks on the signal system equipment, the signal employee cannot be considered qualified on the equipment.

In this final rule, the definition of ''qualified instructor'' has been revised to make it more consistent with the definition of ''qualified instructor'' in 49 CFR 242.7. APTA submitted comments on the definition of ''qualified instructor'' in the proposed rule, asserting that the selection of qualified instructors is inherently the responsibility of railroad management and that discharge of this duty should not be subject to the consent of another party. APTA also expressed concern that some current instructors may not be able to be ''qualified instructors'' because they are not engaged in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems or signal-related technology and would not be considered ''signal employees,'' as defined in this rule. Network Rail Consulting Inc. (NRC) commented that the person providing supervision should have at least two years of experience and no safety-related incidents in the previous two years, while IBEW commented that qualified instructors should have no less than three years of experience working as a certified signal employee.

The definition of ''qualified instructor'' has not, however, been revised in this final rule to remove the required concurrence of the designated employee representative when selecting a qualified instructor or the requirement for the qualified instructor to be a certified signal employee. The required concurrence of the designated employee representative has been retained to facilitate input by designated employee representatives, specifically in situations involving qualified instructor candidates with minimal experience (*i.e.,* less than 12 months experience working as a signal employee) or questionable experience who may be under consideration by railroad management for employment as qualified instructors.

While FRA agrees that it would be beneficial for qualified instructors to have more than one year of signal employee experience, the definition of ''qualified instructor'' has not been revised to require that qualified instructors have at least two years of experience with no safety-related

[26] *Britannica.com.*

incidents in the previous two years. FRA does not have sufficient data to quantify the potential impact on rail safety of having signal employees with at least two years of signal employee experience serve as qualified instructors, as opposed to having signal employees with between one to two years of signal employee experience, serve in this role. Therefore, FRA has retained the requirement that qualified instructors have at least one year of signal employee experience in this final rule.

With respect to the concern expressed by APTA regarding current instructors who may not be able to work as ''qualified instructors'' because they are not ''signal employees'' as this term is defined in this rule, FRA notes that a new term ''signal instructor'' has been added to this section in the final rule. To accommodate current instructors who may not be able to comply with the definition of ''qualified instructor,'' signal instructors are not required to be certified signal employees or even employees of a railroad. However, if authorized by the railroad's certification program, signal instructors may provide signal employee training.

Although the RSIA required FRA to issue a report to Congress on whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees, including ''signal repair and maintenance employees,'' is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety, the RSIA did not define the term, ''signal repair and maintenance employees.'' In the absence of such a definition in the RSIA, FRA is using the streamlined term, ''signal employee'' in this part. This streamlined term, ''signal employee,'' is defined in this final rule as a person who is engaged in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems or related technology. This definition is generally consistent with the definition of ''signal employee'' in the hours of service laws but includes the terms ''troubleshooting'' and ''testing'' which are not found in the statutory definition.[27]

In their comments on the proposed rule, AAR and ASLRRA asserted the final rule should be clear that it does not apply to employees who are not subject to the Federal hours of service law. As noted earlier, the term ''signal employee'' as used in this part is intended to cover all individuals who are currently subject to the Federal hours of service law for signal employees (49 U.S.C. 21104). However, should questions arise as to whether a specific group of employees are considered signal employees for purposes of this rule, FRA will examine the tasks performed by the employees to determine whether they are engaged in the installation, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology (even if such tasks are not the primary focus of the employees' job). If FRA determines that the employees engage in the installation, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology, FRA will then examine whether the employees are covered by the Federal hours of service law for signal employees to determine whether they are signal employees for purposes of this part.

AAR and ASLRRA also commented on the definition of ''signal employee'', asserting that the definition in the proposed rule was unmoored from the definition of ''signal employee'' in the Federal hours of service law (49 U.S.C. 21101(4)), while noting FRA's acknowledgement in the proposed rule that troubleshooting and testing are activities that were not listed in the definition. AAR and ASLRRA asserted that these tasks should be removed from the definition of ''signal employee'' to avoid confusion. However, troubleshooting and testing signal systems has always been considered signal covered service for purposes of the Federal hours of service law. Accordingly, FRA has not revised the definition of ''signal employee'' to remove these tasks.

In the proposed rule, while describing the roles and responsibilities of signal employees, FRA stated that signal maintainers are tasked with inspecting and testing signal systems and performing minor and emergency repairs as needed. AAR and ASLRRA objected to this statement, asserting that FRA did not explain what was meant by ''minor repairs.'' AAR and ASLRRA also asserted that this description limits the scope of a signal employee's work, which could have implications for existing collective bargaining agreements. In addition, AAR and ASLRRA asserted that there are several minor tasks performed by people who are not signal employees and FRA should avoid an overlap in terms when differentiating between these employees. After considering these concerns, FRA revised its description of the work performed by signal employees in the ''Roles and Responsibilities of Signal Employees'' section above to more accurately reflect the work typically performed by signal maintainers.

In their comments on the proposed rule, AAR and ASLRRA also objected to FRA's assertion that a signal employee certification program which includes background checks and disqualification from safety-sensitive service for specified alcohol and drug violations and for refusing alcohol and drug testing could help prevent employees with active substance abuse disorders from ''job hopping.'' AAR and ASLRRA contend FRA presented no evidence that signal employees switch jobs more frequently than other crafts, including those that are subject to certification requirements.

FRA's statements on this issue in the proposed rule were based on FRA's finding in the 2015 report to Congress that the greatest proportion of contractors covered under the hours of service laws are signal employees and that they tend to switch employers more frequently than other crafts of employees. The 2015 report to Congress did not, however, include data showing the frequency with which the employees of signal contractors switch employers, as compared to other crafts of employees. Therefore, FRA has removed statements from this final rule comparing the frequency with which signal employees switch jobs to the frequency with which other crafts of railroad employees switch jobs.

AAR and ASLRRA also contend that the hiring process for signal employees is already thorough. AAR and ASLRRA noted that prospective signal employees undergo pre-employment drug and alcohol testing. Then, once they are hired, AAR and ASLRRA noted that signal employees are subject to random and reasonable basis testing, as well as post-accident/incident testing. FRA agrees that railroads are well positioned to identify signal employees with substance abuse disorders, given existing drug and alcohol testing programs conducted by railroads in accordance with 49 CFR part 219. However, signal employee certification will make it difficult for employees who commit certain safety violations (including violations related to

[27] 49 U.S.C. 21101(4). The hours of service law defines ''signal employee'' as ''an individual who is engaged in installing, repairing, or maintaining signal systems.'' 49 U.S.C. 21101(4). While FRA believes ''troubleshooting'' and ''testing'' would fall under the terms ''installing, repairing, or maintaining'' in the hours of service law definition, FRA wanted to make explicit in this rule that ''troubleshooting'' and ''testing'' are included in the definition of ''signal employee.'' The addition of ''troubleshooting'' and ''testing'' in the definition in this final rule is not intended to capture a broader group of employees than provided in the hours of service law.

prohibited drug and alcohol use) to continue performing safety-sensitive work on railroad signal systems. By issuing this final rule requiring signal employee certification, FRA is taking a proactive approach to minimize (and hopefully eliminate) such occurrences in the future.

In their comments on the definition of ''signal employee,'' APTA requested clarification on how FRA defines ''related technology.'' APTA noted that railroads may have electric traction department employees performing railhead bonding and contractors performing non-vital work such as running direct burial cable. However, APTA asserted that neither the electric traction department employees nor the contractors engaged in running direct burial cable should be considered signal employees for purposes of this part. In addition, APTA asserted that mechanical department employees working on a locomotive's onboard cab signal/PTC equipment might be considered signal employees for purposes of this part.

FRA agrees that individuals who engage in electric traction work, such as railhead bonding, and the running of direct burial cable (without permanently landing or splicing the cable) should not be considered signal employees for purposes of this part. As noted in FRA's Technical Bulletin S–19–01, ''Application of the Hours of Service Laws to Positive Train Control Systems,'' digging trenches for laying signal cable and running cable without permanently landing or splicing the cable are not considered to be signal covered service.

However, employees who test signal system components (even so-called ''self-tests'' of cab signal equipment installed on locomotives) that require the employee to interact with the signal system component, monitor the progress of the test, or interpret the results of the test are considered to be ''signal employees'' who are subject to the Federal hours of service law (49 U.S.C. 21104). Therefore, employees of the railroad's mechanical department are considered ''signal employees'' for purposes of this part if they test signal system components that require the employee to interact with the component, monitor the progress of the test, or interpret the results of the test.

Network Rail Consulting Inc. (NRC) noted in their comments that employees engaged in signal design have not been included in the definition of ''signal employee'' in § 246.7. However, NRC contends that competence management is needed for these employees as well. In contrast, AAR and ASLRRA commented that the work performed by signal design engineers (who program and test the vital and non-vital software programs that perform the functions for a signal system) is very specific and not related to the repair or maintenance of railroad signal systems.

NRC is correct in noting that employees engaged in signal design have not been included in the definition of ''signal employee,'' as they are not considered signal employees for purposes of this part. While competence management would likely be beneficial, as indicated in FRA's Technical Bulletin S–19–01, individuals engaged in the production and design of signal system hardware and software outside railroad property are not generally covered by the Federal hours of service law.

NRC also asserted that the maintenance of signal technology in the operations control center should be covered by this final rule. FRA agrees that the maintenance of signal technology in the operations control center plays an important role in signal system safety. Accordingly, individuals who maintain signal technology in the operations control center (such as electronic control system technicians and centralized traffic control (CTC) maintainers) are considered ''signal employees'' for purposes of this part. As stated in FRA's Technical Bulletin S–19–01, FRA considers work affecting the proper functioning of software to be signal covered service, for purposes of the Federal hours of service law, whether in the field or in an office location. Therefore, in general, individuals engaged in loading, verifying, or testing software or configurations into PTC system hardware are considered to be ''signal employees'' for purposes of this part.

With respect to back-office employees, AAR and ASLRRA noted that these employees are not considered to be signal employees for purposes of the Federal hours of service law (49 U.S.C. 21101(4)). While AAR and ASLRRA acknowledge that some back-office employees have limited ability to remotely access onboard and wayside systems for research purposes, AAR and ASLRRA assert that they do not have the ability to modify any safety-critical component of PTC systems. Therefore, AAR and ASLRRA assert that back-office employees should not be considered signal employees for purposes of this part.

FRA agrees that back-office employees, such as PTC help desk personnel, who do not have the ability to modify any safety-critical component of the PTC system are not considered ''signal employees'' for purposes of this part. However, back-office employees, such as the centralized traffic control (CTC) maintainers, who engage in the installation, troubleshooting, testing, repair, or maintenance of systems that connect the dispatching system to the wayside or onboard train control systems are considered signal employees for purposes of this rule. These employees have historically been subject to the Federal hours of service law for signal employees.

As noted earlier, FRA is adding a definition of ''signal instructor'' to the final rule to facilitate the continued use of third-party training organizations by railroads. Unlike qualified instructors, signal instructors are not required to be certified signal employees. However, as stated in the definition, signal instructors must demonstrate adequate knowledge of the subject matter they are teaching and have the necessary experience to provide formal training of the subject matter. Therefore, even though the signal instructor may not be employed by the railroad, FRA expects railroads to verify that the signal instructors who are providing training on signal systems and signal-related technology have adequate knowledge and the necessary experience to do so.

A slight revision has been made to the definition of ''signal system'' to clarify that this term refers to signal system software and equipment. NRC commented on the proposed definition of ''signal system'' in the proposed rule and asked FRA to clarify whether this definition includes operations control center signal equipment, while also recommending that FRA revise the definition of ''signal system'' in § 246.7 to include a reference to ''train control and detection systems.'' As noted earlier, FRA considers individuals who maintain signal technology in the operations control center (such as electronic control system technicians and CTC maintainers) to be signal employees for purposes of this rulemaking. Therefore, even though the definition of ''signal system'' has not been revised to include a specific reference to ''train control and detection systems,'' FRA is clarifying that operations control center signal equipment falls under the definition of ''signal system'' for purposes of this part.

AAR and ASLRAA also commented on the definition of ''signal system,'' asserting that FRA's definition of ''signal system'' is inconsistent with the definition of this term in the Federal hours of service law (49 U.S.C. 20501). The Federal hours of service law defines ''signal system'' as a block signal system, an interlocking, automatic train

stop, train control, or cab-signal device, or a similar appliance, method, device, or system intended to promote safety in railroad operations.'' [28] However, AAR and ASLRRA fail to mention that this definition of ''signal system'' was issued on July 5, 1994 and covers most of the signal system components that were regulated by FRA's signal regulations in 49 CFR part 236 at that time. In the 30 years that have elapsed since this definition of ''signal system'' was issued in 49 U.S.C. 20501, FRA promulgated regulations that specifically address PTC systems, as well as pathway grade crossings. Therefore, if FRA limited the definition of ''signal system'' to a definition of this term that was promulgated 30 years ago, FRA would have overlooked recent developments in signal system technology and might have inadvertently failed to require certification and related training for signal employees who are tasked with working on recently developed signal system components and signal-related technology.

AAR and ASLRRA also assert FRA needs to clarify that the term, ''signal system,'' does not include signal equipment that is not in service. AAR and ASLRRA assert that FRA has no authority to regulate equipment before or after it has been taken out of service. However, this final rule does not directly regulate signal system equipment. This final rule is intended to ensure that signal employees who install (and remove from service) signal system components and signal-related technology receive sufficient training to perform these tasks in a safe manner. Given the importance of properly installing signal system components that have not yet been placed in service, FRA does not agree with AAR and ASLRRA that persons tasked with installing signal system components which have not yet been placed in service should be exempt from the signal employee certification requirements in this part.

Finally, AAR and ASLRRA commented that the definition of ''signal system'' should not include wayside detection devices used to detect defective conditions on locomotives and rolling stock (such as high-wide load, hot or defective bearing, defective wheel detectors) or other unsafe conditions (such as high-water, high-wind, sliding or slumping soil, rock, or snow detectors) in non-signaled territory, especially if the devices are not integrated into a signal system. AAR and ASLRRA also noted that RSAC Working Group on wayside detectors recently held its kickoff meeting on August 31, 2023. AAR and ASLRRA note that, according to the RSAC Working Group's task statement, the purpose of the Working Group is to consider and review issues related to wayside detectors, including analyzing existing regulations and guidance, accident, incident, and performance data, safety complaints, and existing best practices. Therefore, AAR and ASLRRA assert that any matters impacting how FRA treats wayside detection equipment should be reserved for this RSAC Working Group (which consists of a multi-disciplinary team of subject matter experts.)

As noted earlier, FRA's definition of the term ''signal employee'' is based on FRA's longstanding interpretation of what constitutes signal covered service, as explained in FRA's Technical Bulletin S–19–01. As stated in FRA's Technical Bulletin S–19–01, FRA considers ''installing, repairing, or maintaining locomotive and wayside equipment that encodes or decodes transmissions (*e.g.,* a wayside messaging server) to be signal covered service.'' [29] This final rule does not directly regulate signal system equipment or signal-related technology (such as wayside detection devices). Instead, the signal employee certification regulations in this part are intended to ensure that signal employees who install, troubleshoot, test, repair, or maintain signal system components and signal-related technology (such as wayside detection devices) receive sufficient training to perform these tasks in a safe manner. Therefore, FRA disagrees with AAR and ASLRRA that the signal certification requirements in this final rule should not apply to signal employees who work on wayside detection equipment because an RSAC Working Group has been created to consider and review issues related to wayside detectors.

Given changes that have been made to the scope of this rulemaking since the proposed rule stage (see the section-by-section analysis for § 246.3 above), this final rule contains a definition for the phrase ''tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation.''. This phrase means a tourist, scenic, historic, or excursion operation (''tourist operation'') conducted only on track used exclusively for that purpose. However, even if a tourist operation has a switch connecting it to the general railroad system of transportation (general railroad system), FRA does not consider the tourist operation part of the general railroad system if the tourist operation's trains do not enter the general railroad system and general system railroads do not use the tourist operation's tracks for any purpose other than delivering or picking up shipments from the tourist operation.

Section 246.11 Penalties and Consequences for Noncompliance

This section, derived from 49 CFR 240.11 and 242.11, explains that FRA may impose civil penalties on any person, including a railroad or a contractor (or a subcontractor) providing goods or services to a railroad, who violates any requirement of this rule. IBEW expressed support for the language in this section which states that individuals should only be subject to civil penalties for willful violations.

In their comments on this section, NRC suggested that violations of FRA regulations involving gross negligence, a pattern of repeated violations, or death or injury should be grounds for permanent revocation of signal employee certification. However, as indicated by paragraph (c) of this section, FRA reserves the right to take enforcement action against any person who causes or contributes to non-compliance with FRA's rail safety regulations by assessing a civil penalty or issuing an order prohibiting an individual from temporarily or permanently performing safety-sensitive functions in the rail industry. Therefore, FRA finds it unnecessary to revise this provision.

Subpart B—Program and Eligibility Requirements

Section 246.101 Certification Program Required

This section, derived from 49 CFR 240.101 and 242.101, requires railroads to have written certification programs comprised of multiple elements, each of which comports with specific regulatory provisions in the rule related to that element. This section has been revised in the final rule to include a reference to § 246.120, which was added in this final rule and requires railroads to qualify persons who work on their signal systems and signal-related technology.

Paragraph (c) requires version control for certification programs. Therefore, railroads (and parent companies, if applicable) are required to maintain an up-to-date, detailed list or index tracking every change made to their FRA-approved certification programs. FRA encourages railroads and parent companies to maintain ''redlined''

[28] 49 U.S.C. 20501.

[29] FRA Technical Bulletin S–19–01, page 5.

versions, clearly reflecting revisions and indicating the year of the version against which the revisions appear, of their certification programs to reflect changes that have been made over the years.

Section 246.103 FRA Review of Certification Programs

This section, derived from 49 CFR 240.103 and 242.103, describes FRA's process for reviewing and approving signal employee certification programs.

BRS and TTD submitted comments contending that the deadlines in paragraph (a) of this section should be revised. BRS asserted that Class II and Class III railroads should be required to adhere to the same deadline for submitting their certification programs to FRA as the Class I railroads. Since Class I railroads and commuter service railroads are required to submit their certification programs to FRA within eight months of the effective date of this rule, BRS asserted that aligning the certification program submission deadlines would promote regulatory consistency, while sending a clear message that all railroads, regardless of their size, are equally responsible for meeting the certification requirements within a defined timeframe.

TTD commented that FRA should require Class II railroads to submit their certification programs to FRA within eight months of the effective date of this rule. IBEW submitted a similar comment asserting that several Class II railroads have the capability and resources to develop certification programs within eight months and those Class II railroads should do so to avoid unnecessary delays in implementing this rule.

Despite these comments, FRA has decided to retain the program submission schedule in the proposed rule. In the eight months between the deadlines referenced in paragraphs (a)(1) and (a)(2) of this section, FRA will be devoting its resources to reviewing approximately 40 certification programs from Class I and commuter railroads [30] and is unlikely to have the capacity to begin its review of programs submitted by Class II railroads until after the 16-month deadline. Also, FRA is concerned that the eight-month deadline proposed by the unions may put too much of a strain on some Class II and III railroads. Thus, while FRA shares the unions' desire for speedy implementation of this rule, FRA does not believe that giving Class II and III railroads 16 months to develop and submit their certification programs to FRA will delay implementation.

Paragraph (c) of this section requires railroads (and parent companies, if applicable) to submit their certification programs and their requests for FRA approval (which are described in greater detail in § 246.106(a)) by emailing them to *FRASIGNALCERTPROG@dot.gov.* Paragraph (c) has been revised in the final rule to allow parent companies to submit certification programs on behalf of one or more of their subsidiary railroads. Paragraph (c) has also been revised to require railroads and parent companies to submit their certification programs and requests for FRA approval to a specified email address. In the NPRM, this paragraph stated that signal employee certification programs should be uploaded to a secure document submission site. However, after further consideration, FRA determined that it would be easier for both railroads and the agency if certification programs and requests for FRA approval are submitted to a dedicated FRA email address.

When a railroad or parent company submits its certification program to FRA, paragraph (d) of this section also requires the railroad or parent company to submit a copy of the program and the request for FRA approval to the president of each labor organization that represents the railroad's signal employees and to all of the railroad's signal employees who would be subject to this part. In their comments, AAR and ASLRRA assert that railroads should not have to have their certification programs approved by the labor union president and all of the railroad's signal employees. AAR and ASLRRA claim such a requirement would be a substantial change from FRA's locomotive engineer and conductor certification rules and would be arbitrary and capricious. AAR and ASLRRA also expressed concern that a labor union president could potentially hold up approval forcing the railroad to miss deadlines. In addition, AAR and ASLRRA contend that requiring approval of the labor union president creates an inherent conflict of interest because FRA is allowing the labor union president to approve and exercise control over when and how the railroad uses contractors to perform work on certain signal equipment.

AAR and ASLRRA's concern with respect to paragraph (d) of this section is unwarranted. This rule does not require railroads to obtain approval of their certification programs from labor union presidents or their signal employees. Paragraph (d) only provides these individuals with the opportunity to review and comment on these programs. FRA believes the source of AAR and ASLRRA's confusion was the reference to a ''request for approval'' in paragraph (d)(1) of this section in the proposed rule. However, this document, which is described in greater detail in § 246.106, is a request for approval from FRA, not from a union president or signal employee. To avoid further confusion, FRA has revised references to ''request for approval'' in this section to ''request for FRA approval.''

Several labor organizations, including BRS, IBEW, and TTD expressed concern about the 45-day comment period for railroad certification programs in paragraph (e). They are particularly concerned about the initial influx of programs they will have to review after this rule takes effect, especially if multiple railroads submit their signal employee certification programs on or about the same date, and contend that 45 days will not be enough time to thoroughly review and assess each railroad's certification program. TTD specifically noted its experience with FRA's PTC dockets, asserting that it has been rushed to provide comments on amendments to the critical safety systems described in PTC Safety Plan Requests for Application in fewer than three weeks, due to delays in posting notices in the **Federal Register** that announce the submission of these documents to FRA. Therefore, these labor organizations request that the comment period be extended to 90 days.

Based on these comments from labor organizations, FRA has extended the comment period from 45 days to 60 days. This change will provide commenters with additional time to draft and submit meaningful comments to assist FRA in its review of these programs. However, in an effort to avoid further delays to the implementation of this rule, FRA is declining to extend the comment period to 90 days. FRA understands that labor organizations are particularly concerned about the initial influx of programs they will need to review when this rule first goes into effect, but once the effective date of this rule is established, labor organizations will have several months to plan how to efficiently allocate their resources when they anticipate receiving a large number of programs to review. Also, FRA will consider late-filed comments to the extent practicable and will extend comment periods on a case-by-case basis if circumstances warrant (especially during these initial periods where there is a high volume of programs to review).

AAR and ASLRRA are also opposed to FRA's review and approval process in paragraph (f) of this section.

[30] Regulatory Impact Analysis of the Certification of Signal Employees Final Rule, Docket No. FRA–2022–0020, p. 15.

Specifically, AAR and ASLRRA contend that the proposed process allows FRA ''to arbitrarily hold railroads in limbo for an indefinite time period even if their programs are fully compliant'' [31] and does nothing to ensure that FRA's review process is handled expeditiously. Instead, AAR and ASLRRA recommend that FRA implement the same review and approval process found in parts 240 and 242, whereby a certification program or material modification is considered approved 30 days after it was submitted unless FRA notifies the railroad in writing that its program has been disapproved.

FRA is, however, declining to adopt this suggestion as it is untenable following a 2020 decision from the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In *Brotherhood of Locomotive Engineers and Trainmen* v. *Federal Railroad Administration,* the D.C. Circuit invalidated FRA's passive approval of a modification to Kansas City Southern Railway's locomotive engineer certification program. In its decision, the court noted that the Administrative Procedure Act ''requires agencies to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach.'' [32] The court found FRA's passive approval system allowed for a ''complete absence of any accompanying explanation for the agency's approval'' of the certification program.[33] Since the administrative record did not contain any explanation or reasoning for the determinations made by FRA in approving the program, the court vacated and remanded the case for FRA to provide a more complete explanation of the agency's action or to take new agency action altogether.[34]

Given the D.C. Circuit's criticism of the passive approval system in part 240, it would be ill-advised for FRA to include a similar system in this rule. Therefore, paragraph (f) of this section creates a new system in which a certification program is not considered approved by FRA until the agency issues an approval letter to the railroad or parent company. Contrary to AAR and ASLRRA's comment, FRA will not *arbitrarily* hold railroads in limbo for an indefinite period of time. FRA will make every effort to meet its goal of issuing a decision on a program within 120 days of submission. (This goal was 90 days in the NPRM.) However, as noted above, FRA is extending the comment period on signal employee certification programs to 60 days in this final rule. Accordingly, 120 days for FRA to complete its review of these programs is a more realistic goal. As FRA acknowledged in the NPRM, meeting this goal will not always be feasible and will be especially difficult during the initial implementation of this rule when FRA will receive several programs to review at the same time. During this time, railroads will be able to continue to operate as they did before this rule went into effect so it is unclear how railroads will be harmed by such delays.

Paragraph (g) of this section addresses the process for railroads and parent companies that wish to make a material modification to their previously approved programs. AAR and ASLRRA assert that the definition of ''material modification'' in paragraph (g)(1) of this section is vague and should be revised to avoid stifling innovations in safety systems. In particular, AAR and ASLRRA recommend that FRA ''allow railroads to use different delivery methods and to incorporate new technology without treating those changes as material modifications.'' AAR and ASLRRA also contend that FRA should limit material modifications to significant content-based changes that are likely to impact safety, as opposed to treating edits to test questions, structure, and timelines as material modifications.[35]

However, the term ''material modification'' is intended to cover any change in an approved certification program that significantly affects the certification process. This may include alterations to the training curriculum; modifications to testing or assessment methods; changes to the duration of the program or program components (such as training); changes to the number of test questions or the scoring system; or any other change that would substantially impact the way signal employees are trained, evaluated, and certified. It is vital that FRA and stakeholders have the opportunity to review these proposed changes to a certification program to ensure they align with the overall goals of maintaining safety and compliance.

There are significant safety concerns at play when incorporating new technologies. If new technologies do not receive an appropriate level of oversight, safety risks can be introduced into the system which could also undermine public confidence in railroad safety. Therefore, FRA and stakeholders must be engaged in the review of modifications to certification programs as provided in paragraph (g) of this section. Railroads and parent companies should not introduce new signal technologies without considering them to be material modifications to their signal employee certification programs.

Paragraph (h) of this section describes the process to resubmit a program or material modification that was previously disapproved by FRA. TTD expressed support for paragraph (h)(3) of this section which states that railroads with operational signal systems as of the effective date of this final rule must resubmit their certification program within 30 days, if notified by FRA that their program has been disapproved. TTD cited to instances of railroads not bringing their certification programs into compliance with parts 240 and 242 of this chapter, specifically referencing recent accidents involving Norfolk Southern Railway Company as support for their position. TTD also recommended that FRA amend this section to authorize the issuance of fines against railroads that ''repeatedly are not compliant with the certification requirements.'' [36] FRA appreciates TTD's comment; however, such an amendment is unnecessary, as § 246.11 authorizes FRA to issue civil penalties for violations of this part. FRA will publish a civil penalty schedule for this part on its website.

Section 246.105 Implementation Schedule for Certification Programs

This section, derived from 49 CFR 240.201 and 242.105, contains the timetable for implementation of this final rule. APTA commented that railroads should be allowed to designate individuals who are in an initial training program when this rule goes into effect so that they can become certified signal employees upon completion of the training program. APTA contends that implementing certification requirements in the middle of a training program would be disruptive to the participants and instructors.

In response to APTA's comment, paragraph (d) of this section allows railroads to continue to designate as certified signal employees those individuals who have been authorized by the railroad to perform the duties of a signal employee until FRA approves the railroad's certification program.

[31] FRA–2022–0020–0035.

[32] *Brotherhood of Locomotive Engineers & Trainmen* v. *Fed. R.R. Admin.,* 972 F.3d 82, 115 (D.C. Cir. 2020).

[33] *Brotherhood of Locomotive Engineers & Trainmen,* 972 F.3d at 116–17.

[34] *Brotherhood of Locomotive Engineers & Trainmen,* 972 F.3d at 117.

[35] FRA–2022–0020–0035.

[36] FRA–2022–0020–0032, p.8.

Therefore, railroads will be able to continue to designate individuals as certified signal employees for several months after the effective date of this rule, which should include any person who is in a signal employee training program on the effective date of this rule. However, railroads will no longer be able to designate persons as certified signal employees under paragraph (d) once FRA approves the railroad's program. FRA understands that some individuals will likely be in the middle of a training program when this occurs, but railroads will have several months to prepare for this occurrence and to figure out the best way to minimize any disruption.

FRA is revising paragraph (d) from the proposed rule to clarify that railroads are only allowed to ''designate'' persons as certified signal employees in accordance with paragraph (d) between March 17, 2025 and the date FRA approves the railroad's certification program. Once FRA approves a railroad's certification program, the designation system described in paragraph (d) will no longer be allowed and individuals will be required to obtain certification pursuant to the railroad's certification program.

AAR and ASLRRA submitted comments recommending that FRA create an exception for circumstances in which non-certified railroad employees perform minor or routine corrections to signal systems. In support of this recommendation, AAR and ASLRRA pointed to circumstances in which maintenance of way personnel are tasked with disabling signals. AAR and ASLRRA assert that activities of this nature should not require signal employee certification.

FRA would like to clarify that tasks associated with disabling signal systems, which are performed outside the signal bungalow, are not considered to be signal covered service for purposes of the Federal hours of service law. Therefore, maintenance of way employees engaged in tasks performed outside the signal bungalow to disable the signal system are not considered to be performing signal system work that requires signal employee certification. However, tasks associated with disabling signal systems that are performed inside the signal bungalow are considered to be signal covered service under the Federal hours of service law and, therefore, signal system work that requires signal employee certification pursuant to this part.

To address the issue of designated signal employees who will be eligible to retire within three years of the date FRA approves their railroad's certification program, paragraphs (f)(1) through (3) allow signal employees who are eligible to receive a retirement pension to submit a request to their railroad that they not be certified, in accordance with subpart B of this part, until three years from the date FRA approves the railroad's program.

AAR and ASLRRA recommended, however, that FRA eliminate paragraphs (f)(1) through (3), as they contend these provisions are contrary to FRA's safety rationale for this rule and would allow a signal employee to forego certification for up to six years. AAR and ASLRRA also assert that these provisions will be burdensome on railroads, as they will have to keep track of a special category of employees and establish special protocols for them.

However, after considering those comments, FRA is retaining paragraphs (f)(1) through (3) in this final rule. These paragraphs simply allow signal employees who meet the requirements of paragraph (f)(1) to request that their employing railroad not make them go through the full certification process until their designated certification expires (three years after FRA approves the railroad's certification program). From FRA's perspective, it does not appear to be an efficient use of railroad resources to require designated signal employees who are going to retire before the end of their designation period to complete the full certification process. However, except as provided in paragraph (f)(2), railroads are not required to grant these requests. Paragraph (f)(2) of this section states that, if a railroad grants *any* such request, the railroad must grant all other requests from eligible persons ''to every extent possible.'' In addition, this paragraph does not create a loophole where a signal employee could continue to work on railroad signal systems and signal-related technology for up to six years without a mentor and forego certification. Paragraph (f) plainly states that no person shall be allowed to perform service as a certified signal employee more than three years after their railroad's certification program is approved by FRA without being tested and evaluated in accordance with procedures that comply with subpart B of this part.

Section 246.106 Requirements for Certification Programs

This section contains the organizational requirements and a narrative description of what must be included in a railroad's (or parent company's) certification program. This section has been revised in the final rule to address the submission of certification programs by parent companies. The International Transportation Learning Center (ITLC) submitted comments recommending that FRA authorize the use of model signal employee certification programs, which could be transferable between railroads. FRA anticipates that a non-profit industry association will likely develop a model signal employee certification program template, which can be adopted for use by Class III railroads. However, after considering ITLC's comment, FRA has decided to authorize the submission of signal employee certification programs by parent companies on behalf of one or more of their subsidiary railroads. Therefore, the requirements in this part that apply to railroads subject to this part also apply to parent companies who submit signal employee certification programs to FRA for approval on behalf of one or more of their subsidiary railroads.

Paragraph (a) of this section addresses what must be included in a certification program submission to FRA. The railroad or parent company must include two documents in its submission: (1) a request for FRA approval; and (2) the certification program. If a railroad is submitting its initial certification program, the request for FRA approval can be a brief document that simply states the railroad is submitting its initial signal employee certification program to FRA for approval. However, if a parent company is submitting a certification program on behalf of one or more of its subsidiary railroads, the parent company must provide a list of the railroads that will utilize the certification program. Also, as stated in paragraph (a)(1)(iii), by submitting a certification program on behalf of one or more subsidiary railroads, the parent company assumes responsibility for compliance with this part for all railroads identified on its list that will utilize the parent company's certification program.

If a railroad or parent company would like to make a material modification to a signal employee certification program that has previously been approved by FRA, the request for FRA approval must include a copy of the modified certification program that identifies all of the proposed changes from the last FRA-approved version of the program.

Paragraph (b) of this section requires that signal employee certification programs identify the appropriate person to be contacted in the event FRA needs to discuss an aspect of the railroad's program. Paragraph (b)(1) also requires that railroads (and parent companies, if applicable) submit a

statement electing either to accept responsibility for training persons not previously certified as signal employees (''initial signal employee training'') or to not accept this responsibility.

If the railroad or parent company elects to not accept responsibility for providing initial signal employee training, the railroad or parent company will be limited to certifying signal employees previously certified by another railroad. Prior to certifying these signal employees, however, the railroad or parent company is required by § 246.125 to determine that the signal employee: (a) is qualified on the signal system equipment and signal-related technology deployed on the railroad territory where the signal employee is expected to work; and (b) has demonstrated sufficient knowledge of the certifying railroad or parent company's signal standards, test procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the certifying railroad or parent company's signal system equipment and signal-related technology.

On the other hand, if the railroad or parent company elects to accept responsibility for providing initial signal employee training to persons not previously certified as signal employees, paragraph (b)(1)(iii) requires the railroad or parent company to submit information in their certification program explaining how such persons will be trained. The railroad or parent company has two options. The first option is to provide training through a program developed by the railroad or through a training program adopted by the railroad. The second option is to authorize another railroad or non-railroad entity (which may include a railroad association or rail-labor organization) to provide training. However, if the railroad or parent company chooses the second option, the railroad or parent company will be responsible for ensuring that the training provider adheres to the training program submitted in the railroad or parent company's FRA-approved certification program. A railroad or parent company that chooses to authorize another railroad or non-railroad entity to provide the training must also provide the name of the training provider in its certification program.

For railroads and parent companies that elect to classify their certified signal employees into more than one occupational category or subcategory by class, task, location, or other suitable terminology, paragraph (b)(1)(iv) requires the railroad or parent company to provide detailed information about each occupational category (and subcategory, if applicable) of certified signal employee service in Section One of its certification program.

Paragraph (b)(2) requires railroads (and parent companies, if applicable) to address in Section Two of their certification programs how they will provide training for previously certified signal employees. A matter of particular concern to FRA is how each railroad will ensure previously certified signal employees receive sufficient training on the signal systems and signal-related technology deployed on the railroad's territory. Railroads have the latitude to select the specific subject matters to be covered, the duration of continuing education sessions, the methods of presenting the information, and the frequency with which continuing education will be provided. However, railroads (and parent companies, if applicable) must describe in this section how they will ensure their certified signal employees maintain the necessary knowledge and skills and receive up-to-date and comprehensive training on their signal system equipment and signal-related technology (including new or modified equipment and software modifications) so as to ensure their certified signal employees are qualified on the equipment and technology and compliant with the training standards set forth in § 246.119.

Time and circumstances can diminish both abstract knowledge and the proper application of that knowledge to discrete events. Time and circumstances can also alter the value of previously obtained knowledge and the application of that knowledge. Therefore, certified signal employees also need to have their fundamental knowledge of applicable Federal railroad safety laws and regulations, as well as railroad signal system safety rules and practices, refreshed periodically. Therefore, railroads (and parent companies, if applicable) must also describe in Section Two how they will ensure their certified signal employees remain knowledgeable about the safe discharge of their responsibilities, in accordance with § 246.119. In addition, railroads (and parent companies, if applicable) must explain in Section Two how training will be administered for previously certified signal employees who have had their certification expire. (This requirement was included in § 246.125(b) in the NPRM.) If the railroad or parent company fails to address in Section Two of its certification program how training will be administered to these signal employees, the railroad or parent company must require completion of its entire training program by previously certified signal employees who have had their certification expire.

Section Three of the certification program must address requirements for the testing and evaluation of previously certified signal employees. Paragraph (b)(3)(i) requires railroads (and parent companies, if applicable) to address how their certification programs will comply with the standards found in § 246.121. Section 246.121 requires railroads to employ a written or electronic test containing objective questions that address the following subject matters: (i) compliance with all applicable Federal railroad safety laws, regulations, and orders governing signal systems and signal-related technology; (ii) compliance with all applicable railroad safety and operating rules; and (iii) compliance with all applicable railroad standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal systems and related technology. In addition, the test must include a practical demonstration component. Paragraph (b)(3)(ii) requires railroads (and parent companies, if applicable) to explain their procedures for testing visual and hearing acuity and for ensuring that their medical examiners have sufficient information to make determinations on whether candidates for signal employee certification or recertification can safely work as certified signal employees.

Section Four of the certification program addresses the requirements for training, testing, and evaluating persons not previously certified as signal employees. Railroads and parent companies that elect, in Section One of the certification program, to not accept responsibility for providing initial signal employee training can skip this section. Paragraph (b)(4) requires railroads and parent companies that elect to provide training to persons who have not been previously certified as signal employees to provide details in Section Four of their certification programs on how they will train, test, and evaluate these individuals to ensure they acquire and demonstrate sufficient knowledge and skills to safely perform the job of a certified signal employee.

Railroads and parent companies can authorize non-railroad entities (including signal contractors) to provide the required training. Railroads and parent companies that choose to authorize non-railroad entities to provide the required training will likely find that most, if not all, existing signal

employee training programs approved by FRA pursuant to part 243 of this chapter will need to be revised to comply with the additional training and knowledge testing requirements in this part that specifically apply to signal employees.

Railroads (and parent companies, if applicable) are also required by paragraph (b)(4)(iv) to explain how training will be administered to previously uncertified signal employees who have extensive signal experience. This requirement was previously contained in § 246.125(b) in the proposed rule. If a railroad or parent company elects to provide training to persons who have not been previously certified as signal employees, but fails to specify how it will train these signal employees, the railroad or parent company must require previously uncertified signal employees with extensive signal experience to complete its entire training program.

Paragraph (b)(5) requires railroads (and parent companies, if applicable) to discuss in Section Five of their certification programs how they monitor the operational performance of their certified signal employees in accordance with § 246.123. In particular, the railroad or parent company must discuss the processes and procedures it will use for ensuring that such monitoring and testing is performed. This must include a description of the scoring system the railroad or parent company will employ during monitoring observations and unannounced tests.

Finally, paragraph (b)(6) requires Section Six of a railroad or parent company's certification program to address how the railroad or parent company will perform routine administration of the program. This section must include a summary of how the program will comply with each of the regulatory provisions listed in paragraph (b)(6).

Section 246.107 Signal Service Classifications

This section allows, but does not require, railroads to issue certificates for one or more occupational categories or subcategories of certified signal employee service. While some railroads with only one type of signal employee service might not have any interest in certifying multiple types of signal employee service, larger railroads that have already established multiple categories of signal employee service (such as signal maintainers, signal inspectors, locomotive signal/electrical technicians, etc.) on their territories may find it beneficial to issue certificates for multiple types of signal employee service. Therefore, by allowing railroads to classify their certified signal employees into multiple occupational categories or subcategories, railroads will have the flexibility to shape the structure of their certification programs to highlight the specific tasks and responsibilities for each category and subcategory of certified signal employee working on their territories.

A railroad that classifies its certified signal employees into separate categories, such as signal maintainers, signal inspectors, and locomotive signal/electrical technicians, can issue specific certificates for each category of signal employee service. This section also permits railroads to certify signal employees for signal system work on specific railroad divisions or subdivisions, as opposed to issuing one universal signal employee certificate that would certify the signal employee to perform signal system work anywhere on the certifying railroad's territory. As further explained in the section-by-section analysis of § 246.106(b), railroads that choose to classify their certified signal employees into multiple occupational categories and subcategories are required by § 246.106(b)(1)(iv) to provide detailed information about each occupational category (and subcategory, if applicable) of its certified signal employees.

The Washington Utilities and Transportation Commission (UTC) recommended, in their comments, that FRA require railroads to have multiple classifications of signal employees. Noting that there are many technical differences in signal job categories, as well as varying signal employee experience and skill levels, UTC asserted that requiring signal employee classification will ensure signal employees are trained to work only on the signal system for which they are certified. FRA shares UTC's concern with railroad practices that result in signal employees working on signal systems on which they have not been sufficiently trained.

Accordingly, paragraph (b) of this section requires individuals to immediately notify the railroad (or their employer, if they are not employed by a railroad) if they are called to work on a signal system or signal-related technology on which they have not been certified. However, even more importantly, when notified that a person has been called to work on a signal system or signal-related technology on which they have not been certified, paragraph (c) prohibits the railroad from requiring the person to work on the signal system or signal-related technology unless the person is allowed to work under the direct and immediate supervision of a mentor or qualified instructor in accordance with § 246.124. FRA believes these requirements, in addition to the overarching requirement that railroads develop signal employee certification programs with training, knowledge testing, and operational performance monitoring components for FRA approval, will address UTC's concern regarding signal employees who are instructed to work on signal systems on which the signal employee has not been sufficiently trained.

With respect to paragraph (c), BRS expressed concern that the wording in this paragraph may cause confusion. FRA has therefore revised paragraph (c) to provide clarification. After a railroad's signal employee certification program has been approved by FRA, paragraph (c) prohibits the railroad from requiring any person to work on a signal system or signal-related technology on which the person has not been certified and qualified, unless the person works under the direct and immediate supervision of a mentor or qualified instructor.

Section 246.109 Determinations Required for Certification and Recertification

This section lists the determinations that railroads are required to make when evaluating a candidate's eligibility to be certified or recertified as a signal employee. This section has been revised in the final rule by including a reference to the qualification requirements in § 246.120. An additional minor revision has also been made to replace the reference to ''vision . . . acuity standards'' in paragraph (a)(3) of the NPRM with a reference to ''visual . . . acuity standards'' in this final rule.

Section 246.111 Prior Safety Conduct as Motor Vehicle Operator

This section, derived from 49 CFR 240.111, 240.115, and 242.111, contains the requirements and procedures that railroads are required to follow when evaluating the motor vehicle driving records of a candidate for signal employee certification or recertification. BRS, IBEW, and TTD submitted comments on this section expressing concern that a 60-day time period may not allow enough time to request and obtain driving records as part of the recertification process, due to administrative delays outside the recertification candidate's control. However, paragraph (c) requires candidates for signal employee recertification to request their driving records at least 60 days prior to the date

on which their certification expires. Therefore, at least 120 days will elapse between the date on which candidates for recertification requests their driving records and the end of the 60-day period ''grace period'' authorized by paragraph (c). However, if a candidate for signal employee certification or recertification is unable to obtain their driving records, despite the grace period provided in paragraph (c), paragraph (e) authorizes either the railroad or the candidate for signal employee certification or recertification to submit a waiver petition for regulatory relief.

BRS and TTD recommended that FRA differentiate requirements for obtaining driving records based on the position a signal employee occupies and whether the signal employee is required to operate a motor vehicle. In addition to BRS and TTD, IBEW and NRC expressed concern that requiring railroads to include a review of driving records in their certification programs may inadvertently result in barring certified signal employees and otherwise perfect candidates for signal employee certification who have unsatisfactory driving records from obtaining signal employee certification and recertification.

The intent of this section is not to ensure that every certified signal employee can operate company vehicles, if required to do so. Instead, the intent of this section is to obtain and review motor vehicle records to identify candidates for signal employee certification and recertification who have either been convicted of (or subject to the cancellation, revocation, suspension, or denial of a motor vehicle driver's license for) operating a motor vehicle while under the influence of, or impairment by, alcohol or a controlled substance. By identifying these individuals, they can be referred for evaluation (and potentially treatment) for an active substance abuse disorder, given the safety sensitive nature of certified signal employee work on railroad signal systems and other signal-related technology. Accordingly, as explained in paragraph (m) of this section, the only motor vehicle incidents railroads may consider are related to being under the influence of, or impaired by, alcohol or a controlled substance. This means railroads are not allowed to consider a person's speeding violations or other aspects of their motor vehicle driving record that are not related to alcohol or drug use when making a determination for signal employee certification.

In the NPRM, paragraph (h)(2) of this section required all persons seeking certification or recertification to request driving records from the chief of the driver licensing agency of any jurisdiction, including states or foreign countries, that issued or reissued that person a driver's license in the past five years. This paragraph mirrored 49 CFR 240.111(c)(2).[37] However, FRA determined that a five-year lookback period was unnecessary in this final rule because paragraph (l)(2) of this section only allows railroads to consider motor vehicle driving incidents that occurred within the three years prior to the date of the railroad's certification decision. Thus, FRA changed the lookback period to three years. Furthermore, rather than focusing on when a jurisdiction *issued* or *reissued* a driver's license, FRA thinks the more appropriate inquiry is whether a person *held* a driver's license from the jurisdiction within the previous three years. Therefore, this paragraph has been revised in accordance with these changes.

Paragraph (k) of this section requires certified signal employees and candidates seeking signal employee certification to notify their certifying railroad of motor vehicle incidents described in paragraphs (m)(1) and (2) (*i.e.,* drug and alcohol offenses) of this section within 48 hours of conviction or completed state action to cancel, revoke, suspend, or deny the employee or candidate's motor vehicle driver's license for operating a motor vehicle while under the influence of, or impairment by, alcohol or a controlled substance or refusal to undergo such testing. Paragraph (k) also provides that, for purposes of signal employee certification, a railroad cannot have a more restrictive company rule requiring a signal employee to report a conviction or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license in less than 48 hours. AAR and ASLRRA criticized the language in this provision that precludes railroads from having more restrictive company rules requiring signal employees to report a conviction or completed State action to cancel, revoke, or deny a motor vehicle driver's license in less than 48 hours. AAR and ASLRRA assert that, as a practical matter, railroads should be able to request notification in less than 48 hours as a matter of company policy if they determine notification is in the safety interest of the railroad. AAR and ASLRRA further assert that they could easily envision a scenario where safety would be decreased because an employee takes advantage of the 48-hour grace period after being convicted to delay notification. After considering these concerns, FRA is declining to adopt this requested change. By keeping this requirement in paragraph (k), a railroad cannot revoke, deny, or otherwise make a person ineligible for certification until that person has received due process from the state agency taking action against their motor vehicle driver's license. However, this 48-hour restriction only applies to actions taken against a person's signal employee certification and has no effect on a person's right to be employed by that railroad. By keeping this restriction, paragraph (k) maintains conformity with 49 CFR 240.111(h) and 242.111(l).[38]

Paragraph (l) of this section prohibits railroads from considering motor vehicle driving incidents that occurred prior to the effective date of this rule or more than three years before the date of the railroad's certification decision. AAR and ASLRRA commented that there is no safety reason to limit the review of motor vehicle records to three years as this limitation makes it difficult to establish a pattern of safety abuses.

However, the three-year limit on motor vehicle driving records that can be reviewed for purposes of this rule is based on practical considerations. The three-year limit in paragraph (l) is intended to be consistent with minimum record retention practices of state driver licensing agencies. The three-year limit is also consistent with 49 CFR parts 240 and 242.

With respect to FRA's decision to prohibit railroads from considering safety conduct that occurred prior to the effective date of this rule, FRA is guided both by fairness and by the law. While retroactive effects are not completely prohibited by the Administrative Procedure Act, the U.S. Supreme Court has stated that ''[r]etroactivity is not favored in the law.''[39] Moreover, even if there were a substantial justification for the retroactive application of a rulemaking, ''courts should be reluctant to find such authority absent an express statutory grant.''[40] Given that there is no express statutory grant of authority for this rule to have retroactive effects, FRA has decided not to allow railroads to

[37] The Rail Safety Improvement Act of 1998 required the five-year lookback period for persons seeking locomotive engineer certification. Public Law 100–342, sec. 4, 102 Stat. 624, 625 (1988). However, no such requirement applies to this rule.

[38] This issue was also addressed and discussed 25 years ago when FRA was amending its locomotive engineer certification rule. *See* 63 FR 50626, 50639 (Sept. 22, 1998).

[39] *Bowen* v. *Georgetown University Hosp.,* 488 U.S. 204, 208 (1988).

[40] *Bowen,* 488 U.S. at 208–09.

consider safety conduct that occurred prior to the effective date of this rule.

Section 246.117 Visual Acuity

This section, derived from 49 CFR 240.121, 240.207, and 242.117, contains requirements for visual acuity testing that railroads must incorporate in their signal employee certification programs. As an initial matter, in the NPRM, FRA used the terms ''visual acuity'' and ''vision acuity.'' In the interest of consistency, FRA is using the term ''visual acuity'' throughout this final rule, which includes changing the title of this section to ''visual acuity.''[41]

FRA solicited comments in the NPRM on whether visual acuity standards are necessary for certified signal employees and if so, whether they should be as stringent as existing standards for locomotive engineers and conductors. Multiple comments were submitted, including comments from labor organizations and railroad industry associations. Most commenters, including BRS and TTD, expressed support for requiring individuals to meet the distant visual acuity standard of at least 20/40 (Snellen) in each eye when initially hired to work as a signal employee. Noting that vision and hearing standards are critical to job performance, NRC commented that the visual and hearing acuity standards for certified signal employees should be the same as FRA's visual and hearing acuity standards for certified locomotive engineers and conductors.

In contrast, AAR and ASLRRA submitted comments urging FRA to consider whether the visual acuity requirements are tailored to the work performed by signal employees. AAR and ASLRRA recommended that, prior to implementing visual and hearing acuity requirements, FRA should analyze the components of a signal employee's duties and address how particular visual and hearing acuity requirements impact the ability of signal employees to safely perform their work.

In response to these comments, FRA closely reviewed the tasks performed by signal employees and determined that a signal employee's visual acuity is a critical component of a signal employee's roles and responsibilities. In recent years the equipment on which signal employees work has significantly evolved. Historically, employees were required to interpret circuit plans, manuals, railroad standards, relay positions, and the color of signals. North American signals generally fall into three categories of multi-head electrically lit units. These are the searchlight, color light, position light/color position light. Each of these units requires a colored lens or roundel to be installed in front of the light. Visual acuity is therefore critical to a person performing signal employee work. Being able to distinguish the color of signal lenses/roundels utilized in the industry signals is critical to ensure the correct signal aspect is presented as intended to the train crew. In the past, the color of a signal lens/roundel was often embossed on the lens itself, which helped signal employees ensure the correct lens was placed in the proper position within a signal head. However, some lenses/roundels are not marked in a manner to indicate their color. So, it is incumbent on the signal employee installing the lenses/roundels to be able to distinguish its color.

With the introduction of light emitting diodes (LED), a signal employee must be able to distinguish the actual color the LED emits. When testing, this must be accomplished a significant distance away from the signal. LED technology also allows a signal head to display a variety of signal colors. Therefore, it is critical for signal employees to distinguish the color of signals and not simply the position of the signal head being lit. When testing earlier versions of signals or the current LED versions, this must be accomplished a significant distance away from the signal.

With the introduction of microprocessor equipment, signal employees need to see the position of micro-switches and the color of micro-indicators located on circuit boards. These items, which are often very small (sometimes less than an 1/8-inch in size), are prevalent on microprocessor equipment used within both signal and highway-rail grade crossing warning systems. In addition, signal employees need to be able to distinguish the correct color of proposed circuit changes on circuit plans. Proposed circuit changes are often indicated by lines of different colors on a circuit plan.

Therefore, after taking a closer look at the safety-sensitive tasks performed by signal employees, FRA decided to retain the visual acuity standards proposed in the NPRM. These visual acuity standards are consistent with the visual acuity standards for other modal professionals throughout the transportation industry, such as air traffic controllers and pilots.[42]

FRA also received comments that were critical of FRA's proposal in paragraph (b)(3) in the proposed rule to periodically test signal employees seeking recertification on their ability to recognize and distinguish between the colors of railroad signals. BRS explained that after the first year of employment, the emphasis on color distinction becomes less relevant. BRS asserted that signal workers quickly become familiar with blueprints, enabling them to determine the intended aspect to be illuminated without solely relying on color identification. IBEW expressed concern that FRA's proposal to test both initial hires and signal employees seeking recertification on their ability to recognize and distinguish between the colors of railroad signals would unnecessarily penalize and disqualify signal workers who are colorblind.

To accommodate signal employees who develop color vision deficiencies during the course of their employment, BRS, IBEW, and TTD recommended that FRA establish an alternative assessment. More specifically, BRS and TTD recommended FRA establish an alternative assessment that evaluates an employee's knowledge of signal aspects and their ability to interpret blueprints accurately to help ensure railroads retain a skilled signal workforce.

FRA acknowledges that some individuals may not be able to meet the threshold visual acuity standards in this section but may be able to compensate in other ways that will allow them to safely perform their duties as a certified signal employee. However, FRA has determined that the flexibility afforded by paragraph (d) of this section is preferable to establishing an alternative assessment.

Paragraph (d) of this section permits a railroad to have procedures whereby doctors can evaluate individuals who cannot meet the threshold visual acuity standards in this section and make discrete determinations about the individual's ability to compensate in ways that will allow them to safely perform their tasks as a signal employee. If the railroad's medical examiner concludes that the individual could safely serve as a certified signal employee, the railroad can certify that person after the railroad obtains the medical examiner's professional medical opinion to that effect. If necessary, medical examiners can condition their opinion on certain circumstances or restrictions, such as the use of corrective lens.

APTA expressed support for the flexibility provided by paragraph (d) and asserted this flexibility should be maintained so that signal employees

[41] ''Visual acuity'' appears to be the term used in the medical field. *See* Visual Acuity, American Optometric Association, found at *https://www.aoa.org/healthy-eyes/vision-and-vision-correction/visual-acuity?sso=y.*

[42] 14 CFR 67.303.

who have the ability to recognize and distinguish the different aspects of railroad signals can remain eligible for certification. While IBEW expressed concern that paragraph (d) gives too much discretion to railroad medical examiners, FRA disagrees. Whether a person meets the standards for visual acuity in this final rule is a medical determination. Therefore, it is appropriate for a medical professional to determine whether a person can safely perform as a certified signal employee. Second, a medical examiner will only exercise discretion pursuant to this section if a person does not satisfy the objective visual acuity criteria in paragraph (c) of this section. Finally, railroad medical examiners have been handling these issues for over 30 years for locomotive engineer certification and for over 10 years for conductor certification. To date, FRA is unaware of any significant problems involving the exercise of this discretion.

Section 246.118 Hearing Acuity

This section, derived from 49 CFR 240.121, 240.207, and 242.117, contains requirements for hearing acuity testing that railroads must incorporate in their signal employee certification programs.

Paragraph (c) of this section contains the general hearing standards that a person must satisfy to be certified as a signal employee unless they are determined to have sufficient hearing acuity under paragraph (d) of this section. The standards in paragraph (c) mirror the hearing acuity standards for locomotive engineers and conductors in 49 CFR parts 240 and 242.

In the proposed rule, FRA solicited comments on whether hearing acuity standards are necessary for certified signal employees and if so, whether they should be as strict as the standards for locomotive engineers and conductors. FRA received a range of comments in response to these questions. BRS noted in their comments that railroaders encounter high noise levels during their day-to-day work, due to a variety of sources of noise in their work environment, including locomotive engines, train horns, heavy equipment operations, and rail grinding. While the use of earplugs is common practice to mitigate noise exposure, BRS asserted that earplugs can only provide a certain level of protection against hearing loss throughout a railroader's career. Accordingly, BRS acknowledged the value of hearing acuity tests for monitoring and detecting hearing loss.

BRS and IBEW contended, however, that hearing acuity tests should be limited to testing candidates for signal employee certification and recertification to verify that they can accurately differentiate important auditory cues or signals. In addition, IBEW expressed concern that this section gives too much discretion to railroad medical examiners. On the other hand, NRC contended that vision and hearing standards are critical to job performance. NRC commented that the visual and hearing acuity standards for certified signal employees should be the same as FRA's visual and hearing acuity standards for certified locomotive engineers and conductors.

AAR and ASLRRA recommended that FRA consider whether the hearing acuity requirements are tailored to the work performed by signal employees. AAR and ASLRRA also asserted that, prior to implementing vision and hearing requirements, ''FRA needs to analyze the components of a signal employee's duties and address how particular vision and [hearing] acuity requirements impact the ability of signal employees to safely perform their work.'' [43]

Given the range of comments on this issue, FRA closely reviewed the tasks performed by signal employees and determined that a signal employee's hearing acuity is critical to their personal safety and the safety of others. A signal employee must be able to communicate with a dispatcher to ensure on-track safety has been properly established for themselves or others. Signal employees often rely on the sound of a locomotive horn when they utilize train approach warning as a form of protection for tasks that are performed near the track. On-track safety is a key item covered in the required job briefings. Signal employees must be able to understand the job briefing prior to fouling the track.

Signal employees must also communicate safety sensitive instructions to the dispatcher to obtain protection for defective signal system equipment, such as a stop and flag order to protect a malfunctioning highway-rail grade crossing warning system. In addition, signal employees need to hear other signal employees when they perform signal tests. Employees are often called upon to call out signal aspects while locking tests are performed. With the evolution of microprocessor equipment, signal employees also need to be able to hear the distinct codes being transmitted by the equipment, such as micro-lock or electrocode. Signal employees listen for unusual sounds while inspecting signal system equipment, such as switch machines and gate mechanisms, as such sounds can indicate a need for additional investigation or maintenance.

FRA acknowledges that some individuals may not be able to meet the threshold hearing acuity standards in this section but may be able to compensate in other ways that will allow them to safely perform their duties as a certified signal employee. However, FRA has determined that the flexibility afforded by paragraph (d) of this section is preferable to limiting hearing acuity tests to verifying that the individual can accurately differentiate between auditory cues or signals.

Therefore, after close review of the safety-sensitive tasks performed by signal employees, FRA decided to retain the hearing acuity standards proposed in the NPRM. For the reasons explained in the section-by-section analysis for § 246.117 above, FRA does not share IBEW's concern that this section gives too much discretion to a railroad medical examiner.

Section 246.119 Training Requirements

This section requires railroads to provide initial, periodic, and qualification training to certified signal employees. Such training is necessary to ensure certified signal employees have the knowledge, skills, and abilities necessary to safely perform all of the safety-related duties mandated by Federal law, regulations, and orders.

As an initial matter, FRA deleted paragraph (b) of this section in the proposed rule. In the proposed rule, paragraph (b) would have required the railroad to state in its certification program whether the railroad elects to accept responsibility for training persons who have not been previously certified as signal employees or only certify persons who have been previously certified by other railroads. FRA removed this language from this section because it is duplicative of what is already required under § 246.106(b)(1). Accordingly, paragraph (b) in this final rule focuses on training requirements that apply to railroads or parent companies that elect to accept responsibility for training persons who have not been previously certified as signal employees.

NRC commented that FRA should set minimum standards for training program design and issue those standards in a circular or other supplemental guidance. However, FRA does not plan to issue a circular or supplemental guidance (such as an appendix to this part) at this time because § 246.106 addresses NRC's concern. Section 246.106, which is derived from appendix B to part 240

[43] FRA–2022–0020–0035, pp. 28–29.

and appendix B to part 242, provides railroads with more information on how to design and structure their programs. Section 246.106 provides a description of what information should be included in each section of the program. FRA has found through its experience with locomotive engineer and conductor certification that issuing a separate circular or appendix is unnecessary as railroads can look to the appendices in parts 240 and 242 for guidance on how to satisfy the requirements of those rules. Thus, FRA does not see a need for issuing a separate circular or appendix with respect to signal employee certification.

If a railroad (or parent company) accepts responsibility for training persons who have not been previously certified as signal employees, paragraph (b) of this section requires the railroad or parent company to state in its certification program whether it will conduct the training or whether it will authorize a third party to provide the training on its behalf.

This section gives railroads (and parent companies, if applicable) the latitude to design and develop the training and delivery methods they will employ. Pursuant to paragraph (c), a railroad or parent company that elects to accept responsibility for training persons who have not been previously certified as signal employees is required to explain how training will be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, practical demonstration, on-the-job training, or other formal training. Paragraph (c)(3) also requires railroads (and parent companies, if applicable) to review and modify their training programs whenever new safety-related railroad laws, regulations, orders, and procedures are issued, as well as whenever new signal system equipment or signal-related technology are introduced into the workplace.

TTD submitted comments expressing concern that many railroads are not providing an acceptable level of training to employees. IBEW expressed a similar concern and asserted that § 246.125 allows one railroad to rely upon a signal employee's certification awarded by another railroad. Accordingly, IBEW recommended that FRA require 160 hours of on-the-job training, at least half of which should be in the field.

FRA acknowledges these concerns and suggestions and is taking this opportunity to clarify some of the requirements of this subpart. FRA agrees that recent industry trends have resulted in declining quality and/or quantity of training and testing, a concern FRA has voiced to the industry on multiple occasions including recent disapproval of conductor certification programs. These instances reveal that some railroads have misinterpreted the discretion provided to them in parts 240 and 242 as permission to submit certification programs that are sparse on details. Such railroads are mistaken as to what is required under parts 240 and 242, and FRA audits have highlighted significant issues with these programs and underscored the critical need for railroads to provide detailed and comprehensive submissions.

While FRA believes railroads should be provided some flexibility in the design of their certification programs to address specific signal-related risks and unique needs, FRA's review and approval process outlined in § 246.103 is meant to ensure that railroads do not abuse this discretion with respect to their signal employee certification programs. This rule requires a railroad to document the details of its training and testing program and § 246.106 mandates that each certification program include sufficient detail for effective evaluation. FRA will disapprove programs that are vague or insufficiently detailed, in accordance with § 246.103(f)(2).

While every railroad is different and the training needed to be certified signal employee for a Class I railroad may vary significantly from the training needed to be a certified signal employee for a short line railroad, FRA will review each signal employee certification program and determine, on a case-by-case basis, whether the program contains sufficient on-the-job training. Railroads are required to provide enough detail in their certification programs to allow for effective evaluation of the training that will be provided (including on-the-job training) to ensure that their certified signal employees can safely perform their assigned duties.

Also, as will be discussed further in the section-by-section analysis of § 246.125, this final rule does not allow railroads to rely completely on the signal employee certification awarded by another railroad. Each railroad is required to certify the signal employees who will be working on their signal systems and signal-related technology (or require that non-certified persons perform work on their signal systems and signal-related technology under the direct and immediate supervision of a mentor).

Paragraph (e) of this section contains the requirements a person, not previously certified as a signal employee, has to satisfy in order to become a certified signal employee. Paragraph (e)(2) states that the person must successfully complete on-the-job training and demonstrate on-the-job proficiency by successfully completing the tasks and using the signal system equipment and signal-related technology necessary to be a certified signal employee on the certifying railroad. The paragraph has been revised in this final rule to clarify that, if the railroad has elected to classify its certified signal employees into more than one occupational category or subcategory, the person must successfully complete the tasks applicable to the signal employee occupational category or subcategory in which the person is seeking to be certified.

NRC asked for clarification on whether railroads that accept responsibility for providing initial signal employee training are required by paragraph (e) to structure their training programs to ensure candidates for initial signal employee certification demonstrate on-the-job proficiency using wayside signal equipment, as well as signal technology in the operations control center. However, the type of equipment used by candidates for initial signal employee certification to demonstrate on-the-job proficiency will vary depending upon the nature of the work each candidate will be assigned to perform. As discussed earlier, FRA considers individuals who maintain signal technology in the operations control center (such as electronic control system technicians and CTC maintainers) to be signal employees for purposes of this part. Therefore, FRA expects that railroads who accept responsibility for providing initial signal employee training and have employees or contractors maintain signal technology in their operations control centers will require candidates for signal employee certification to demonstrate on-the-job proficiency using signal technology in the operations control center if there is a reasonable possibility that the candidate may be assigned to work there.

Paragraph (g) requires railroads, regardless of their election in paragraph (b) of this section, to provide comprehensive training on the installation, operation, testing, maintenance, and repair of the signal systems and signal-related technology deployed on their territory. This training must include training on both signal software and signal equipment. To implement this requirement, paragraph (g) requires railroads to address in their certification program how such training will be provided and

how the railroad will ensure that each certified signal employee is qualified on the signal system equipment and signal-related technology deployed on the railroad's territory before the employee is required to install, operate, test, maintain, or repair that equipment or technology.

UTC staff and NRC expressed support for this requirement in their comments on the proposed rule. UTC staff contended that comprehensive training should include all new and existing signal systems and signal-related technologies. NRC recommended that comprehensive training include common principles, in addition to the specifics of the equipment that the railroad's certified signal employees will work on. As reflected in this section, railroads must provide comprehensive training that includes detailed training on the specific signal system equipment and signal-related technology that the signal employee will be required to use, as well as detailed training on any new signal system equipment and signal-related technology that will be deployed on the railroad's territory before the employee is required to install, operate, test, maintain, or repair the equipment or technology.

NRC recommended that comprehensive training for certified signal employees include some level of design knowledge as a functional role. NRC also recommended that installation staff and maintenance staff not be trained on tasks that they will not perform as part of their job duties. While FRA agrees that it would be beneficial for certified signal employees to understand the functional role of the design of the signal systems and signal-related technology on which they are assigned to work, FRA has not incorporated this recommendation as an explicit requirement in this final rule. In addition, this rule allows railroads the flexibility to decide whether to classify their certified signal employees into multiple categories (and subcategories), as well as the flexibility to decide which tasks will be performed by their employees. Therefore, while FRA has not included a regulatory provision that would prohibit railroads from training installation and maintenance staff on tasks they are unlikely to perform as part of their job duties, railroads are only required by § 246.119(g) to ensure that each certified signal employee is qualified on the signal system equipment and signal-related technology deployed on their territory before the certified signal employee is required to install, operate, test, maintain, or repair it.

Paragraph (g)(3) requires railroads to discuss, in their training programs, the maximum amount of time that a certified signal employee can be absent from performing work on signal systems or signal-related technology that requires certification before requalification will be required. This time period cannot exceed 12 months. However, railroads may choose a shorter time period if they desire.

IBEW commented on this provision in the proposed rule, recommending that FRA reduce the maximum period of time during which signal employees can be absent from performing safety-sensitive work on signal systems before refresher training will be required to six months. IBEW also recommended that FRA require railroads to provide 16 hours of on-the-job training, as part of the required refresher training. IBEW recommended that FRA increase the number of required hours of on-the-job training to 24 hours, if the signal employee is absent from performing safety-sensitive work for 12–23 months. In addition, for signal employees who are absent from performing safety-sensitive work for 24 months or more, IBEW recommended that FRA require recertification. FRA strongly recommends that railroads provide refresher on-the-job training to signal employees who fail to successfully complete the unannounced compliance test required by § 246.123 after returning to work on the railroad's signal systems and signal-related technology that requires certification. However, if a certified signal employee has not performed work on signal system equipment or signal-related technology that requires certification for more than 12 months, they will no longer be qualified on signal system equipment or signal-related technology as set forth in § 246.120(c). Therefore, when the certified signal employee returns to work on the railroad's signal systems and signal-related technology that requires certification, they will be required to work under the direct and immediate supervision of a mentor until they become qualified on signal system equipment and signal-related technology pursuant to § 246.106(b)(2)(v). In addition, railroads are required to submit their signal employee certification programs to FRA for approval. Therefore, FRA will evaluate railroad plans to provide refresher training as discussed in their signal employee certification programs on a railroad-by-railroad basis.

Paragraph (h) of this section (which was paragraph (i) in the proposed rule) addresses transfers of railroad ownership. NRC commented on paragraph (i) in the proposed rule, and suggested that instead of saying signal employees of the acquiring company ''may receive familiarization training'' from the selling company, the paragraph should state that signal employees of the acquiring company ''will receive training from the selling company''.[44] Whether a selling company will provide familiarization training to the acquiring company's signal employees is, however, a decision that should be made by both parties. If FRA were to make the permissive language in this paragraph mandatory, it would essentially entangle itself in the contract negotiations between the two parties which is not FRA's role. FRA's main concern with respect to this issue is that the training is performed properly, not who performs the training. FRA does not see a compelling reason for mandating that the selling company provide this training and since NRC did not provide a rationale for this suggested change, FRA is not adopting this suggestion. By not adopting this suggestion, paragraph (h) in this final rule will remain consistent with the analogous provisions found at 49 CFR 240.123(d)(1) and 242.119(i).

NRC also contends paragraph (h) should apply when there is a change in the private operator of a commuter railroad. Since NRC did not provide a rationale for why such a change would be necessary or beneficial, FRA is not adopting this suggestion. However, FRA notes that in situations involving a change in the operator of a commuter railroad, there is nothing in part 246 that would prohibit the prior operator from providing familiarization training to the signal employees of the new operator.

Paragraph (i) of this section requires each railroad to provide for the continuing education of its certified signal employees to ensure each certified signal employee maintains the necessary knowledge concerning compliance with all applicable Federal railroad safety laws, regulations, and orders; compliance with all applicable railroad safety and operating rules; and compliance with all applicable standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of new and existing signal systems and new and existing signal-related technology deployed on its territory.

[44] FRA–2022–0020–0027.

Section 246.120 Requirements for Qualification

Section 246.120 has been added to the final rule to clarify that railroads are required to provide sufficient training on the signal system equipment and signal-related technology that have been deployed on their territories to ensure their certified signal employees are qualified on the railroad's signal systems and signal-related technology, and, therefore, may reasonably be expected to be proficient on their operation and use. Prior to attaining qualification, all individuals assigned to work on the railroad's signal system equipment and signal-related technology are required by paragraph (a)(2) of this section to work under the direct and immediate supervision of a mentor or qualified instructor.

Section 246.121 Knowledge Testing

This section, derived from 49 CFR 240.125, 240.209, and 242.121, requires railroads to include procedures for the initial and periodic testing of certified signal employees in their certification programs. Paragraph (b) of this section outlines the general requirements for such testing. This testing must effectively examine a signal employee's knowledge of: (a) all applicable Federal railroad safety laws, regulations, and orders governing signal systems and signal-related technology; (b) all applicable railroad safety and operating rules; and (c) all applicable railroad standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal systems and related technology.

With respect to written tests used by railroads to determine whether candidates for certification have sufficient knowledge of their signal systems and signal-related technology, BRS, ITLC and TTD recommended that FRA require railroads provide accommodations to employees who require them, including giving candidates for signal employee certification the option to request having the test questions read aloud to them. TTD also recommended that railroads be required to provide additional time to prepare, access to reference materials, and extended time for testing, to employees who require these accommodations. IBEW requested language advising that all employees subject to tests required by this part are covered by all applicable facets of the Americans with Disabilities Act (ADA).

In this subpart, FRA is establishing general parameters for the testing that must be conducted to determine whether candidates for certification have the skills and knowledge necessary to perform the tasks that are assigned to certified signal employees by the certifying railroad. FRA has determined that, in general, a person needs to be able to read and comprehend written instructions to safely perform the job of a certified signal employee. FRA is not, however, creating or administering the tests required by this part. Railroads continue to have the flexibility to determine how to develop and administer testing in accordance with Federal anti-discrimination laws, including Title I of the ADA. Therefore, FRA finds it unnecessary to include language in this final rule to remind railroads that they need to comply with Federal anti-discrimination laws.

In their joint comments on paragraph (b)(1) of this section, AAR and ASLRRA noted the requirement to test knowledge of ''[t]he railroad's rules and standards for disabling and removing signal systems from service.'' AAR and ASLRRA recommended FRA clarify that it does not intend to restrict tasks related to the disabling of signal systems to signal employees with this rulemaking. Therefore, FRA clarifies that those tasks associated with disabling signal systems that are performed outside the signal bungalow are not considered signal covered service for purposes of the Federal hours of service law. Therefore, employees engaged in tasks performed outside the signal bungalow are not performing signal system work that requires signal employee certification. However, tasks associated with disabling signal systems that are performed inside the signal bungalow are considered signal covered service under the Federal hours of service law and, therefore, signal system work that requires signal employee certification pursuant to this part.

This section allows railroads the discretion to design the tests that will be employed. For most railroads, this will entail modifying their existing ''book of rules'' examination to include new subject areas. This section does not specify the minimum number of questions to be asked or the passing score to be obtained. IBEW submitted comments on this provision, recommending that FRA require railroads to establish 80% as the minimum passing grade on tests required by the railroad's signal employee certification program. However, FRA has decided to refrain from requiring railroads to establish 80% as the minimum passing grade on tests required by their signal employee certification programs. Under this final rule, the testing procedures and requirements selected by railroads will be discussed in the certification programs, which the railroads must submit to FRA for approval and provide a copy of to the president of each labor organization representing its signal employees and to all of the railroad's signal employees subject to this part. Therefore, labor organizations and signal employees may comment on proposed tests, and FRA will monitor the exercise of discretion being afforded to railroads by this section.

Paragraph (b)(6) in the proposed rule would have required that tests be conducted without open reference books unless use of such materials is part of a test objective. BRS commented on this provision, noting that some railroads allow open book testing per existing agreements. TTD and NRC also commented on this paragraph and recommended that FRA require railroads to provide access to reference materials during knowledge testing. In addition, AAR and ASLRRA recommended that FRA allow for greater use of open reference books and other materials. Therefore, FRA re-evaluated its position on open book testing, as reflected in the final rule. Unlike locomotive engineers who cannot refer to reference materials while actively operating trains, signal employees are often encouraged to refer to reference materials when they have a question about the relevant standard or threshold that needs to be met during maintenance or testing of a signal system or signal-related technology. Accordingly, unlike §§ 240.125 and 242.121 in this chapter which limit the use of open book testing for locomotive engineers and conductors, this final rule has been revised to allow railroads the flexibility to administer open book knowledge tests. However, railroads are required by paragraph (b)(6) to address in their certification programs how they will use open book knowledge tests. In extending this flexibility to railroads, FRA expects that open book tests will be used for the primary purpose of testing certification candidates' ability to use written materials. Nonetheless, since the testing procedures and requirements selected by railroads will be submitted to FRA for approval, FRA will monitor the exercise of discretion being afforded to railroads by this section.

Paragraph (c) of this section has been revised to require the railroad to provide the person(s) being tested with an opportunity to consult with a mentor, signal instructor, or qualified instructor to explain one or more test questions. This revision has been made to expand the scope of individuals who are

authorized to explain test questions to persons being tested.

If a person fails a test administered in accordance with this section, paragraph (d) of this section prohibits the railroad from allowing that person to work as a certified signal employee until they achieve a passing score on reexamination. The railroad will decide how much time, if any, must pass after a test failure before a certification candidate can be reexamined. Furthermore, the railroad will decide what additional training, if any, a candidate will receive after a test failure. The railroad will also have discretion to decide whether there should be a limit on the number of times a candidate can retake a test, and if so, the number of test retakes the railroad will allow.

Section 246.123 Monitoring Operational Performance

This section, derived from 49 CFR 240.129 and 242.123, requires railroads subject to this part to describe in their certification programs how they will monitor the operational performance of their certified signal employees.

Paragraph (a) of this section requires railroads to include procedures in their certification programs for giving each certified signal employee at least one unannounced compliance test each calendar year on the railroad's signal standards and test procedures or Federal regulations concerning signal systems. Paragraph (a)(3) requires railroads to describe the actions they will take if they find deficiencies in a certified signal employee's performance during an unannounced compliance test. IBEW commented on this provision, recommending that FRA prohibit railroads from assessing discipline if such deficiencies are found (with the exception of violations of § 246.303(e)), so that railroads will focus on providing the signal employee with coaching, counseling, and/or additional training, if needed. However, FRA believes it is up to each railroad to decide the appropriate action to take in light of various factors, including collective bargaining agreements.

To avoid restricting the options available to railroads and employee representatives to develop processes for handling test failures, FRA designed this regulation to be as flexible as possible. There are a variety of actions and approaches that a railroad can take, such as developing and providing formal remedial training for certified signal employees who fail tests or have deficiencies in their performance. Railroads can also implement formal procedures whereby certified signal employees are given the opportunity to explain, in writing, the factors that they believe caused their test failure or performance deficiency. These explanations could help railroads identify areas on which to focus training or perhaps discover that the reason for the failure/deficiency was due to something other than a lack of skills. FRA believes there are numerous approaches that could be considered and evaluated by railroads and their certified signal employees. Railroads have the ability to adopt an approach that is best for their organizations.

Paragraph (a)(4) requires railroads to describe how they will monitor the performance of signal-related tasks by their certified signal employees. For example, railroad monitoring could include unaccompanied, post-installation inspections of signal cut-overs (conducted within three days of the installation) to verify that the certified signal employee properly installed and tested the signal system, in accordance with the railroad's signal standards.

Paragraph (b) of this section requires railroads to have certified signal employees administer the unannounced compliance tests required by this section once a railroad's certification program has been approved by FRA. Thus, at the latest, FRA expects railroads to perform these unannounced compliance tests on their certified signal employees during the calendar year immediately following the year their certification program is first approved by FRA. For example, if FRA approves one railroad's program in January 2025 and another railroad's program in December 2025, both railroads would be required to perform unannounced compliance tests on their certified signal employees in 2026. While FRA encourages these railroads to perform unannounced tests after their programs are approved in 2025, FRA recognizes it may not be practical to perform unannounced tests by the end of 2025, especially for the railroad whose program was not approved until December 2025.

Paragraph (d) of this section reflects FRA's recognition that some certified signal employees may not be performing tasks that require certification. Therefore, railroads would not be required to give those certified signal employees an unannounced compliance test. For example, a certified signal employee may be on furlough, in military service, off with an extended illness, or working in another craft. In situations like these where a certified signal employee is not performing tasks that require certification, the railroad would not have to give an unannounced compliance test. However, when the certified signal employee resumes work on signal systems that requires certification, the railroad is required to provide an unannounced compliance test within 30 days, if the certified signal employee has not been given an unannounced compliance test each calendar year pursuant to the railroad's procedures as described in the railroad's certification program. Moreover, the railroad is required to retain a written record documenting the dates on which the certified signal employee stopped performing work requiring certification, the date the certified signal employee resumed signal system work requiring certification, and the date the certified signal employee received their unannounced compliance test following their resumption of signal system work requiring certification.

BRS recommended that FRA extend this 30-day period to six months (and TTD expressed support for this recommendation) to allow more time for signal employees to reacquaint themselves with the environment and signal system equipment before being subjected to a compliance test by railroad management. In addition, IBEW recommended that FRA revise this provision to prohibit railroads from conducting unannounced compliance tests within 15 days of the signal employee's return to signal system work that requires certification. However, FRA anticipates that this 30-day period will only apply to a small number of certified signal employees—namely, certified signal employees who have not performed work that requires certification on signal systems and signal-related technology for an extended period and who have not been given an unannounced compliance test each calendar year.

In addition, if a certified signal employee has not performed work that requires certification on signal system equipment or signal-related technology for more than 12 months, they will no longer be qualified on signal system equipment or signal-related technology as set forth in § 246.120(c). Therefore, when the certified signal employee returns to signal system work that requires certification, they will be unable to work on the railroad's signal system equipment and signal-related technology unless they work under the direct and immediate supervision of a mentor or qualified instructor. The certified signal employee must continue to work under the direct and immediate supervision of a mentor or qualified instructor until they become qualified on signal system equipment and signal-

related technology pursuant to § 246.106(b)(2)(v). Thus, even without revising paragraph (d) of this section, a returning certified signal employee will perform work on signal system equipment and signal-related technology under the direct and immediate supervision of a mentor or qualified instructor which should help reacquaint the employee prior to the unannounced compliance test.

FRA's conductor certification regulations in 49 CFR part 242 contain a similar 30-day period within which the railroad must conduct an unannounced compliance test for conductors who have not performed work requiring certification for an extended period, and FRA is not aware of any significant hardship caused by this requirement. Therefore, given the availability of FRA's waiver process to address any hardship that could potentially be caused by administering an unannounced compliance test within 30 days of a certified signal employee's return to signal system work, FRA has not extended the 30-day unannounced compliance testing requirement in paragraph (d) of this section or limited railroads to conducting the unannounced compliance test within 15–30 days of the signal employee's return to signal system work requiring certification.

Section 246.124 Mentoring

This section requires railroads to include in their certification programs procedures for mentoring persons who have not been certified by the railroad (such as employees of a signal contractor who have not been certified by the railroad). Paragraph (a) of this section also requires railroads to identify potential scenarios in which non-certified persons may work on the railroad's signal system and signal-related technology in their certification programs. In addition, paragraph (e) of this section requires railroads to address in their certification programs how mentoring will be provided to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring.

These requirements to identify potential scenarios in which non-certified persons may perform work on the railroad's signal system and signal-related technology and to explain how mentoring will be provided were added in response to comments submitted by APTA, BRS, and TTD. APTA noted that the proposed rule might inadvertently prevent contractors from installing signal system equipment until the railroad trains the contractor's employees on the signal system. While APTA expressed concern that requiring qualified instructors to have at least one year of experience might lead to this unintended result, railroads can have their own certified signal employees serve as mentors to uncertified signal contractors who are hired to work on the railroad's signal system or signal-related technology. In addition, depending on the length of the project and the frequency with which the signal contractor is hired to work on the railroad's signal system and signal-related technology, the signal contractor and railroad may decide to have one or more of the signal contractor's employees complete the railroad's certification program and become certified to work on the railroad. In this scenario, the signal contractor's employees, who are certified to work on the railroad, could serve as mentors to the signal contractor's uncertified signal employees. Nonetheless, as stated in paragraph (b) of this section, after FRA has approved the railroad's certification program, the railroad is prohibited from allowing uncertified persons to work on its signal system and signal-related technology unless the uncertified person works under the direct and immediate supervision of a mentor or qualified instructor.

TTD expressed concern that one year of experience does not provide enough time for an employee to demonstrate real proficiency in the signal craft and foster skill development by their mentees. As noted earlier, BRS commented that, after the first year of implementing this final rule, mentors should be required to have at least three years of experience working with sophisticated signal systems. While FRA agrees that it would, in most cases, be beneficial for mentors to have more than one year of certified signal employee experience, FRA does not have sufficient data to determine the potential impact on rail safety of requiring signal employees to have at least three years of certified signal employee experience to serve as mentors. However, to ensure that a signal mentor is not assigned to supervise multiple work groups scattered over a job site, FRA is requiring railroads to explain in their certification programs how mentoring will be provided to ensure each mentor is located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring.

ITLC and BRS would have FRA exert more oversight over railroad mentors, as they expressed support in their comments for requiring railroads to establish structured mentorship programs. ITLC noted in its comments that just because someone knows how to do a job does not mean they have the skillset necessary to reinforce lessons and learning objectives in a supportive way for another employee.

This rule establishes minimum requirements to ensure, among other things, that signal employees receive sufficient training before they are certified to work on signal systems and signal-related technology. As noted above, FRA revised this section to require railroads to identify scenarios in which uncertified persons would work on the railroad's signal system and signal-related technology and to explain how mentoring will be provided to ensure each mentor is located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring.

FRA also revised the definition of ''mentor'' in this final rule to require mentors to exercise ''direct and immediate supervision'' over the work performed by the signal employees they mentor. This approach is consistent with the approach taken in FRA's regulations on the Training, Qualification, and Oversight for Safety-Related Railroad Employees (codified in 49 CFR part 243). As noted in the preamble to FRA's final rule on training and qualification standards, on-the-job training should include instruction and hands-on experience, as well as ''sufficient opportunity for practice and feedback.'' [45]

FRA encourages railroads to utilize structured mentorship programs to help train their mentors, in addition to the training that they provide to their signal employees. However, FRA declines to require railroads to establish structured mentorship programs, in addition to signal employee certification programs. FRA has determined that requiring railroads to establish structured mentorship programs falls outside the scope of this rulemaking, given the lack of currently available data illustrating the effect of structured mentorship programs on signal system safety.

After a railroad's certification program has been approved by FRA, paragraph (b) of this section prohibits the railroad from allowing uncertified persons to work on signal systems or signal-related technology that requires certification unless the person is working under the direct and immediate supervision of a mentor or qualified instructor.

[45] 79 FR 66460, 66479 (Nov. 7, 2014).

Paragraph (c) of this section applies to railroads who elect to classify their certified signal employees into more than one occupational category or subcategory, in accordance with § 246.107. These railroads are required by paragraph (c) to address in their certification programs how mentoring will be provided for certified signal employees who move into a different occupational category or subcategory of certified signal service. This paragraph has also been revised in the final rule to require that the mentor be certified within the occupational category or subcategory for the tasks being performed by the person or persons working under their direct and immediate supervision.

Paragraph (d) has been revised to state that, if allowed by the railroad's certification program, any work on a signal system performed by a person whose signal employee certification has been revoked shall be performed under the direct and immediate supervision of a mentor or qualified instructor. The proposed rule referred to mentors providing direct oversight and supervision of signal employees whose certification had been revoked.

Paragraph (e) of this section reflects FRA's intent that mentors are held accountable for the work performed by the persons working under their direct and immediate supervision. Therefore, in addition to requiring railroads to address how mentoring will be provided to ensure each mentor is located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring, paragraph (e) also requires railroads to address in their certification programs how they will hold mentors accountable for the work performed by persons working under their direct and immediate supervision. This paragraph has been revised in the final rule to require that tests performed by persons working under the direct and immediate supervision of a mentor reflect the mentor's name.

Section 246.125 Certification Determinations Made by Other Railroads

This section of the rule, derived from 49 CFR 240.225 and 242.125, contains requirements that apply when a certified signal employee is about to begin work for a different railroad. This section allows a railroad or parent company to rely on determinations made by another railroad or parent company concerning a person's signal employee certification.

This section has been revised in the final rule to reflect that parent companies are authorized to certify signal employees if they submit and obtain FRA approval of a signal employee certification program on behalf of their subsidiary railroads. In addition, the requirements in paragraph (b) of this section in the proposed rule, which pertain to specific training for previously uncertified signal employees with extensive signal experience and for previously certified signal employees whose certification has expired, have been moved to § 246.106(b).

Paragraph (c) in the proposed rule is now paragraph (b) in the final rule. This paragraph has been revised to require the certifying railroad or parent company to determine that the person is qualified on the signal system equipment and signal-related technology deployed on the railroad territory on which the person is expected to work. This change has been made to incorporate the newly-added regulatory requirements in § 246.120, which require a railroad to make the determination that a person is qualified on the signal system equipment and signal-related technology deployed on the railroad territory on which the person is expected to work prior to certifying them.

Subpart C—Administration of the Certification Program

Section 246.201 Time Limitations for Certification

This section contains various time constraints to preclude railroads from relying on stale information when evaluating a candidate for certification or recertification. Paragraph (a)(3) in the NPRM stated that railroads could not rely on knowledge tests that were conducted more than one year before the date of the railroad's certification decision and paragraph (a)(4) stated that the knowledge test must have been conducted no more than two years prior to the certification decision if the railroad administers knowledge tests at intervals that do not exceed two years. For the final rule, FRA decided to combine these two paragraphs into paragraph (a)(3).

Section 246.205 List of Certified Signal Employees and Recordkeeping

This section, derived from 49 CFR 240.221 and 242.205, requires each railroad subject to this part to maintain a list of its certified signal employees.

NRC submitted comments on this section asserting that FRA should require each railroad to maintain a list of active certified signal employees and their competencies. FRA agrees that railroads who classify their certified signal employees into occupational categories or subcategories by class, task, location, or other suitable terminology pursuant to § 246.107 should be required to indicate the occupational categories and subcategories in which each certified signal employee is certified to perform service. Therefore, paragraph (a) of this section has been revised accordingly. However, Class III railroads generally do not classify their signal employees into occupational categories and subcategories, as these signal employees generally perform whatever signal work is needed. Therefore, this section has not been revised to require all railroads subject to this part to maintain a list of the occupational categories and subcategories in which each of their certified signal employee is certified to perform service.

Paragraph (b) of this section requires railroads to update their lists of certified signal employees at least annually, and to make their lists of certified signal employees available, upon request, to FRA representatives in a timely manner. In their comments, BRS and TTD recommended that the final rule require railroads to share their lists of certified signal employees with the national office of each designated labor organization representing their signal employees. Similarly, IBEW recommended that FRA require railroads to share their lists of certified signal employees with labor organizations upon request. BRS, TTD, and IBEW contend that requiring railroads to share their lists of certified signal employees with the designated labor organizations that represent their signal employees would create a collaborative approach to safety, as well as a level of transparency and communication that would contribute significantly to the overall safety culture and reinforce the collective goals of supporting accident prevention and the well-being of signal employees.

While FRA has no objection to railroads providing these lists to their employees and their designated employee representatives, it is unclear how this proposed requirement would advance the safety interests of this rule. Sharing the lists of certified signal employees is an internal matter that should be resolved between railroads and their designated employee representatives. Thus, FRA does not see a compelling reason to mandate a particular approach.

Section 246.207 Certificate Requirements

This section contains requirements for the certificate that railroads are required to issue to each certified signal employee. The requirements in paragraphs (a) through (d) of this section, which pertain to the minimum content for certificates and authorization of each person who would be designated to sign the certificates, are derived from 49 CFR 240.223 and 242.207.

Paragraph (a) of this section specifies that railroads have the option of issuing certificates electronically or in paper form. FRA is making a minor change to paragraph (a)(1) in the proposed rule, by allowing the signal employee certificate to identify either the railroad or the parent company issuing the certificate. This change acknowledges that, in some cases, a parent company may have one signal employee certification program for one or more of the parent company's subsidiary railroads. In this scenario, the certificate must identify the parent company as having issued the certificate, as well as each of the parent company's subsidiary railroads on which the person has been certified as a signal employee. This change brings this paragraph into conformity with parts 240 and 242.

Individuals who are certified by multiple railroads that are not owned by the same parent company must receive a signal employee certificate from each railroad that certifies them (or each parent company of the railroad that certifies them). For railroads who choose to classify their certified signal employees into occupational categories or subcategories, pursuant to § 246.107, paragraph (a)(2) requires the railroad to list the specific signal employee category(ies) or subcategory(ies) in which the person has been certified.

AAR and ASLRRA commented that railroads should not be required to include a person's year of birth on a signal employee certificate. After consideration of this comment, FRA agrees that including the year of birth on the signal employee certificate is unnecessary and is removing this requirement in the final rule. The purpose of the requirements in paragraph (a)(3) is to identify a certified signal employee, and, as AAR and ASLRRA stated, the birth year provides little to no assistance in confirming a person's identity, and there are other ways, such as a physical description or photograph of the certified signal employee, which is already included in paragraph (a)(3), that better serve this goal. AAR and ASLRRA added that, instead of the birth year, FRA could add a person's hire date to the list of requirements on the certificate. However, the hire date provides even less relevant information than the birth year in terms of identification. Thus, FRA sees no reason to require the hire date on a signal employee certificate.

Paragraph (f), derived from 49 CFR 240.301 and 242.211, requires a railroad to promptly replace a person's signal employee certificate, at no cost to the person, if the certificate is lost, stolen, mutilated, or becomes unreadable. However, unlike § 242.211(b), this section does not contain detailed requirements for temporary replacement certificates. Temporary replacement certificates generally contain most of the information provided on official certificates. Therefore, it does not appear to be especially burdensome for railroads to issue temporary certificates to replace certificates that have been lost, stolen, mutilated, or become unreadable. Nonetheless, by refraining from proposing a formal process for the issuance of temporary replacement certificates, FRA is allowing railroads to decide how and when to issue temporary replacement certificates.

APTA commented that paragraph (f) could create a situation in which an employee regularly loses their certificate. Accordingly, APTA recommended that FRA clarify that this provision does not preclude use of the railroad's progressive disciplinary process for accountability purposes. FRA agrees that paragraph (f) is not intended to preclude the use of reasonable discipline by railroads, in response to signal employees who frequently lose their certificates.

Section 246.213 Multiple Certifications

This section addresses various issues involving persons who have, or are seeking to obtain, multiple certifications.

Paragraph (d) discusses how the revocation of a person's signal employee certification would affect a person's ability to work in another railroad craft that requires certification, and vice versa. The general rule articulated in paragraph (d) is that if a person's signal employee certification is revoked for an alcohol or drug violation, they may not work in another certified craft during the period of revocation, and vice versa. However, if a person's signal employee certification is revoked for a violation that does not involve alcohol or drugs, the person may work in another certified craft during the revocation period, and vice versa.

AAR and ASLRRA commented that if a person's signal employee certificate is revoked for any reason, that person should not be allowed to work in another certified craft during the period of revocation, and vice versa. Their stated rationale is that if a person commits a safety violation in one craft, that shows ''a disregard for process, and there should not be an assumption that the employee's disregard is function or craft specific.'' [46] The associations also contend that 49 CFR 240.308(f) and 49 CFR 242.213(h) do not allow a decertified conductor to work as a locomotive engineer or vice versa.

As an initial matter, the assertion by AAR and ASLRRA that parts 240 and 242 do not allow a decertified conductor to work as a locomotive engineer is not accurate. Under 49 CFR 240.308(f) and 49 CFR 242.213(h), if a person's conductor certification is revoked for a violation described in 49 CFR 242.403(e)(6) through (11), they may still work as a locomotive engineer during the revocation period. FRA's rationale for this distinction is that 49 CFR 242.403(e)(6) through (11) involve violations of 49 CFR part 218, subpart F, and since locomotive engineers cannot have their certifications revoked for such violations, ''it would be unfair to prohibit a person from working as an engineer for a violation that currently would not result in the revocation of his or her engineer certificate.'' [47] For similar reasons, FRA finds that it would be unfair to prohibit a person from working as a certified signal employee because they passed a stop signal while working as a locomotive engineer, or because they committed some other violation that would not otherwise result in the revocation of their signal employee certificate. AAR and ASLRRA's proposal would lead to unfair treatment between persons with a single certification and persons who are certified in multiple crafts. For the reasons stated above, FRA believes that the proposed rule adopted the same approach taken in parts 240 and 242 and does not see a reason to make any changes to this section in the final rule.

Furthermore, as noted in the NPRM,[48] the tasks performed by a certified signal employee are so inherently different from the tasks performed by persons in other certified crafts that it does not automatically follow that a person's revocable event as a signal employee indicates they are more likely to have a revocable event while performing another certified craft, and vice versa.

[46] FRA–2022–0020–0035.

[47] 76 FR 69802, 69825 (Nov. 9, 2011).

[48] 88 FR 35654.

Therefore, under this final rule, a certified signal employee may continue to work as a certified signal employee if their certification is revoked for any of the violations described in 49 CFR 240.117(e) or 49 CFR 242.403(e) that do not involve use of alcohol or drugs. Similarly, a person can continue to work in another certified craft if their signal employee certification has been revoked for a violation described in § 246.303(e)(1) through (10).

Section 246.215 Railroad Oversight Responsibilities

This section, derived from 49 CFR 240.309 and 242.215, requires each Class I railroad (including the National Railroad Passenger Corporation), each railroad providing commuter service, and each Class II railroad to conduct an annual review and analysis of its program for responding to detected instances of poor safety conduct by certified signal employees. FRA has formulated the information collection requirements of this section to ensure that railroads collect data on signal employee safety behavior and feed that information into their operational monitoring efforts, thereby enhancing safety.

FRA has, however, also revised paragraph (d) of this section to facilitate sharing of this information and to promote communication and collaboration between railroads and labor organizations to improve railroad safety. Paragraph (d) has been revised in the final rule to allow for the president of a labor organization that represents the railroad's signal employees to request that the railroad provide them a report of the findings and conclusions reached during the railroad's annual review and analysis required under this section. In the interest of fairness, FRA is also allowing the railroad's certified signal employees who are not represented by a labor organization to make such a request.

Paragraph (e)(7) has also been revised in the final rule to include a reference to incidents involving noncompliance with FRA's blue signal regulations in part 218 of this chapter, in addition to noncompliance with FRA's roadway worker regulations in part 214 of this chapter. This change has been made to more accurately reflect the list of revocable events in § 246.303(e).

Subpart D—Denial and Revocation of Certification

This subpart parallels part 240 and part 242's approach to adverse decisions concerning certification (*i.e.,* decisions to deny certification or recertification and revoke certification). With respect to denials, the approach of this rule is predicated principally on the theory that decisions to deny certification or recertification will come at the conclusion of a prescribed evaluation process conducted in accordance with the provisions set forth in this subpart. Thus, this rule contains specific procedures designed to ensure that a person in jeopardy of being denied signal employee certification or recertification will be given a reasonable opportunity to examine and respond to negative information that may serve as the basis for being denied certification or recertification.

When considering revocation, this rule mandates that decisions to revoke certification will only occur for the reasons specified in this subpart. Since revocation decisions by their very nature involve a clear potential for factual disagreement, this subpart is structured to ensure that such decisions will only be made after a certified signal employee has been afforded an opportunity for an investigatory hearing at which the presiding officer determines whether there is sufficient evidence to establish that the person's conduct warranted revocation of their signal employee certification.

This subpart also provides for certificate suspension in certain circumstances. Certificate suspension will be employed in instances where there is reason to think the certificate should be revoked or made conditional, but time is needed to resolve the situation. Certificate suspension will be applicable in instances where a person is awaiting an investigatory hearing to determine whether that person violated certain provisions of FRA's alcohol and drug control rules, or committed a violation of certain signal standards, procedures, or practices, and situations in which the person is being evaluated or treated for an active substance abuse disorder.

Section 246.303 Criteria for Revoking Certification

This section, derived from 49 CFR 240.117, 240.305, and 242.403, identifies the circumstances in which certified signal employees may have their certification revoked.

Paragraph (c) has been revised in the final rule to reiterate that a certified signal employee who is assigned to monitor, mentor, or instruct a person is responsible for the work performed by that person. (For purposes of this part, the definition of the term ''person'' in § 246.7 includes railroad employees, as well as employees of a railroad contractor or subcontractor.) Accordingly, a certified signal employee who is monitoring, mentoring, or instructing a person and fails to take appropriate action to prevent a violation of paragraph (e) of this section will have their certification revoked. FRA expects each mentor to be actively involved in the tasks that are performed by the person(s) they are mentoring, as these tasks must be performed under the direct and immediate supervision of the mentor. Mentors must be located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to avert a violation of paragraph (e) of this section from occurring. Similarly, qualified instructors who are engaged in evaluating or monitoring a person performing signal employee tasks must also pay close attention to the work being performed and be located in close proximity to the person performing signal employee tasks to allow the qualified instructor to take immediate action to avert a violation of paragraph (e) of this section from occurring. Thus, FRA anticipates that a verbal warning provided by a mentor or qualified instructor without any other action will not, in most cases, be sufficient to allow the mentor or qualified instructor to avoid responsibility for a violation of paragraph (e) of this section caused by the work performed by the person(s) being monitored, mentored, or instructed. Therefore, paragraph (c) has been revised in the final rule by removing language in the proposed rule which indicated that, in general, a verbal warning would constitute appropriate action.

Paragraph (e) provides the eleven types of rule infractions that could result in certification revocation. The infractions listed in paragraphs (e)(1) through (11) are derived in part from the revocable events provided in 49 CFR 242.117(e) but have been modified to account for the duties and responsibilities of a certified signal employee.

AAR and ASLRRA commented on the rule infractions in paragraphs (e)(5) and (e)(7). Paragraph (e)(5) refers to a certified signal employee's failure to restore power to a train detection or highway-rail or pathway grade crossing warning device or system after manual interruption of the power source. For violations of this nature, railroads are directed to consider only those violations that result in activation failure. AAR and ASLRRA assert that it would be better to proactively address the certified signal employee's misconduct before an activation failure occurs. AAR and ASLRRA also assert that FRA regulations do not require FRA to wait for an activation failure before

citing the railroad in such a scenario. However, FRA disagrees. A situation involving failure to restore power to a grade crossing warning system does not constitute a violation of FRA's grade crossing regulations in part 234 of this chapter, in the absence of an activation failure, unless the standby source of power was also insufficient. Therefore, paragraph (e)(5) has not been revised.

AAR and ASLRRA also commented on the rule infractions in paragraph (e)(7), which refers to a certified signal employee's failure to comply with FRA's Roadway Worker Protection regulations in 49 CFR part 214. AAR and ASLRRA noted that, given the language in paragraph (e)(7) in the proposed rule, revocation of signal employee certification for a person who ascertains that on-track safety needs to be provided but fails to do so would not be allowed. FRA has revised paragraph (e)(7) in the final rule to close this inadvertent loophole and require railroads to consider violations involving a person who failed to obtain proper on-track safety before fouling the railroad track.

NRC also commented on paragraph (e)(7), recommending revocation of the person's roadway worker certification (instead of revoking signal employee certification) in response to a violation of FRA's Roadway Worker Protection regulations in 49 CFR part 214. However, a person, whose signal employee certification is revoked, loses their ability to perform work as a certified signal employee for the duration of the revocation period, not just their ability to perform the specific task or activity in which they were engaged when the revocable incident occurred. In addition, railroads generally do not have roadway worker certification programs, so this recommendation was not adopted.

Paragraphs (e)(8) through (10) refer to a certified signal employee's failure to comply with FRA's Railroad Operating Practices regulations related to work performed on, under, or between rolling equipment. BRS and TTD asserted that the regulatory provisions cited in paragraphs (e)(8) through (10) do not apply to signal employees and recommended that FRA remove references to these regulatory provisions.

However, as discussed earlier, the signal employee certification requirements in this part apply to any person who meets the definition of signal employee contained in § 246.7, regardless of the fact that the person may have a job classification title other than that of signal employee.[49] Therefore, electricians who are engaged in testing locomotive cab signal equipment are considered to be signal employees (when engaged in this task) for purposes of this part. Accordingly, railroads must address electricians who test locomotive cab signal equipment in their signal employee certification programs, if applicable. Also, electricians who are engaged in testing locomotive cab signal equipment will be subject to revocation of their signal employee certification if they fail to comply with § 218.25, 218.27, or 218.29 during such testing.

APTA noted that the revocable offenses listed in paragraphs (e)(7) through (10) are related to an individual's personal safety, as opposed to the safety of the railroad system, and therefore should be removed. TTD submitted similar comments, asserting that the revocable offenses listed in paragraphs (e)(8) through (10) do not apply to signal employees. However, most signal employees are required to work on or near the railroad tracks to perform their assigned tasks. Therefore, FRA does not view compliance with its roadway worker regulations in 49 CFR part 214 as being solely related to an individual's personal safety. Similar to the revocable offense for conductors who fail to take appropriate action to prevent the locomotive engineer of the train to which the conductor is assigned from occupying a segment of main track without proper authority or permission, failure to comply with FRA's roadway worker regulations in 49 CFR part 214 could impact not only the safety of the individual whose actions are non-compliant, but the safety of each member of a signal work gang who is relying on the roadway worker protection obtained by the designated roadway worker-in-charge.

Human factors are also one of the leading causes of train accidents and incidents. Therefore, the revocable offenses listed in paragraphs (e)(8) through (10), which involve non-compliance with FRA's blue signal protection requirements in subpart B of part 218 of this chapter, are intended to reduce the number of human factor-caused accidents and incidents involving individuals who work on cab signal and PTC equipment. In sum, the revocable offenses listed in paragraphs (e)(7) through (10) are intended to reduce fatalities and injuries caused by non-compliance with FRA's roadway worker and operating practice regulations.

[49] *See* § 246.1(c).

Paragraph (i) of this section prohibits a railroad from revoking a person's signal employee certification if the revocable event occurred during an operational test that was not conducted in conformance with part 246, the railroad's operating rules, or the railroad's program under 49 CFR 217.9. AAR and ASLRRA commented that FRA should take into consideration the type of error that occurred and whether it harmed the certified signal employee. If the error was a minor procedural error that did not cause substantial harm to the certified signal employee, AAR and ASLRRA contend there is no safety basis to preclude railroads from revoking the person's signal employee certification if the person committed a revocable offense during such test. FRA disagrees. When railroads perform operational tests, they have a duty to ensure the tests are done properly under both Federal law and the railroad's own rules. Keeping paragraph (i) in its current form will incentivize railroads to fulfill this duty. If FRA adopted the associations' suggestion, it would create a gray area where one did not previously exist. It would also complicate the job of the Certification Review Board (CRB) as some individuals would presumably raise this issue in their petitions to the CRB. The CRB would then have to determine whether an error on an operational test caused the person substantial harm. FRA finds that with respect to this issue, a bright-line rule is preferable. It should not be a heavy burden for railroads to properly perform these operational tests. Thus, FRA is not making any changes to this paragraph from the proposed rule.

Section 246.305 Periods of Ineligibility

In this section FRA describes how a railroad must determine a person's period of ineligibility if they have their signal employee certification revoked. For certified signal employees, paragraph (a) explains that the period of revocation will begin on the date of the railroad's written notification to the person that recertification has been denied or certification has been suspended.

Paragraph (b) of this section provides that the revocation period will be based on the number of revocable violations a person has committed over a certain period of time. AAR and ASLRRA requested that FRA ''clarify that the 36-month period is on a rolling basis such that each new revocation has the potential to extend the 36-month

clock.'' [50] The 36-month period in paragraphs (b)(3) and (4) is a lookback period from the most recent violation. For example, if a certified signal employee committed a violation described in § 246.303(e)(1) through (11) on January 1, 2028, the railroad would have to determine how many revocable violations the certified signal employee committed from January 1, 2025, to January 1, 2028. If the certified signal employee had two additional revocable events during this time period (making the violation on January 1, 2028 the third such violation), then paragraph (b)(3) would apply and the railroad would have to revoke the person's certification for one year.

In their joint comment, AAR and ASLRAA also criticized the periods of ineligibility in this section for being too lenient and recommended that FRA revise paragraph (b)(4) so that if a certified signal employee has four revocable events in a 36-month period, they are no longer eligible to be certified. As an initial matter, this section only addresses how long a person is ineligible to work as a certified signal employee following an incident described in § 246.303(e). This section does not limit the discipline a railroad can issue in response to a revocable event, other than limiting the amount of time the railroad can revoke the person's signal employee certification. For example, if a certified signal employee commits a violation described in § 246.303(e)(1) and the certified signal employee has no prior history of committing a revocable event, paragraph (b)(1) of this section prohibits the railroad from revoking the person's signal employee certification for more than 30 days. However, the railroad can choose to hold the person out of service for longer than 30 days or can terminate its employment of the person, if the railroad thinks such discipline is warranted.

FRA is declining to adopt AAR and ASLRRA's recommendation to revise paragraph (b)(4) so that four revocable events in a 36-month period would render a person permanently ineligible to hold certification. FRA thinks a three-year revocation period is a reasonable penalty and it aligns with the discipline structure found in parts 240 and 242. Furthermore, FRA already has an established process in place for disqualifying persons from performing safety-sensitive work on either a temporary or permanent basis. If a railroad finds a person's actions are so egregious that they warrant disqualification, the railroad can refer the case to FRA, and the agency can determine whether to initiate the disqualification procedures proscribed in 49 CFR part 209, subpart D. FRA believes the process outlined in part 209 is preferable to creating a blanket requirement in this rule that would permanently disqualify a person from working as a certified signal employee.

Section 246.307 Process for Revoking Certification

This section, derived from 49 CFR 240.307 and 242.407, covers the procedures a railroad must follow to revoke a person's signal employee certification.

Paragraphs (a) and (b) of this section have been revised in the final rule to include references to violations of Federal regulatory provisions when discussing actions by a certified signal employee that could result in revocation of signal employee certification. FRA would also like to clarify that if the certifying railroad determines a certified signal employee violated a Federal regulatory provision, railroad test procedure, signal standard or practice described in § 246.303(e), the railroad is required to revoke signal employee certification even if the person's employment by the railroad is terminated during the certification revocation process, so that the person will be unable to work as a certified signal employee for another railroad during the period of revocation.

Paragraph (b)(1) of this section requires a railroad to immediately suspend a person's signal employee certification upon receipt of reliable information regarding a violation of § 246.303(e). Prior to, or upon suspending, the signal employee certificate, paragraph (b)(3) requires railroad to provide either verbal or written notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing. If the initial notice was verbal, then the notice would have to be promptly confirmed in writing. The amount of time the railroad has to confirm the verbal notice in writing depends on whether or not a collective bargaining agreement is in effect and applicable. In the absence of such an agreement, a railroad has four days to provide written notice. If a notice of suspension is amended after a hearing is convened, or does not contain citations to all Federal regulatory provisions, railroad test procedures, signal standards, and practices that may apply to the potentially revocable event, the CRB, if asked to review the revocation decision, might subsequently find that this constitutes procedural error pursuant to § 246.405.

Paragraph (b)(5) of this section in the NPRM provided that no later than the start of the hearing, the railroad would be required to provide the certified signal employee with a copy of the written information and a list of witnesses that the railroad would present at the hearing. BRS and TTD submitted comments criticizing this paragraph, contending that it put the certified signal employee in a disadvantaged position, unable to adequately prepare their case or mount a proper defense. BRS strongly recommended that the language in this provision be modified to require the railroad to provide the certified signal employee with the necessary written information and a comprehensive list of witnesses upon request. Similarly, TTD requested that this provision be revised to require that the certified signal employee and their labor representative, if applicable, ''receive a copy of all information and a list of witnesses sufficiently in advance of the hearing in order to properly develop a defense.'' [51]

After considering these concerns, FRA is amending paragraph (b)(5) to require railroads to provide certified signal employees with a copy of the written information and a list of witnesses they will present at the hearing at least 72 hours before the start of the hearing. FRA thinks this change promotes fairness and will provide a certified signal employee and their representative with sufficient time to prepare a proper defense. However, if an applicable collective bargaining agreement allows for railroads to provide this information less than 72 hours before the start of the hearing, the railroad will be in compliance with this paragraph as long as it satisfies the requirements of the applicable collective bargaining agreement.

Paragraph (b)(5) in the NPRM also stated that if an employee of the railroad provided information that will be presented at the hearing, the railroad must make that employee available for examination at the hearing. TTD commented that this provision should be modified to require any witness upon which the railroad is relying to support its allegations against the certified signal employee to be present at the hearing for questioning by the certified signal employee and/or their representative. However, FRA is declining to make this change, as FRA recognizes that railroads are limited in their ability to compel non-employees to testify at these hearings. FRA is, however, adding language to paragraph (b)(5) to clarify that railroads must make an employee

[50] FRA–2022–0020–0035.

[51] FRA–2022–0020–0032.

available for examination at the hearing if the employee provided information that will be used by the railroad at the hearing, regardless of whether an applicable collective bargaining agreement addresses this issue.

FRA is also making some other changes to this section, from what appeared in the proposed rule, to align with parts 240 and 242. Paragraph (b)(6) of this section states that after the hearing, the railroad must determine, based on the hearing record, whether certificate revocation is warranted. FRA is adding language from 49 CFR 240.307(b)(5) and 242.407(b)(5) to this paragraph noting that the railroad must also state the basis for its decision which is discussed in more detail in paragraph (e). Similarly, FRA added language to paragraph (d)(8) stating that while a railroad can consolidate a revocation hearing with a disciplinary hearing, it must still make a separate finding regarding revocation and it must ensure that the railroad official making the finding(s) is not the investigating officer. This new language, found in 49 CFR 240.307(e) and 242.407(e), clarifies for railroads that the requirements in paragraph (d)(1) of this section still apply when the revocation hearing is consolidated with a disciplinary hearing.

In addition, FRA added language not found in the NPRM to clarify what is required under paragraph (j) of this section. Paragraph (j) requires railroads to keep records of evidence that lead the railroad to not revoke a person's signal employee certification in accordance with paragraph (h) or (i). In this final rule, FRA is acknowledging that this requirement does not just apply if this information comes to light during a revocation hearing. Railroads must also retain this evidence if it becomes available before the railroad suspends the person's signal employee certification or before the revocation hearing is convened. The language FRA added to this final rule mirrors language found in 49 CFR 240.307(j) and 242.407(j).

Subpart E—Dispute Resolution Procedures

This subpart details the opportunities and procedures for a person to challenge a railroad's decision to deny certification or recertification or to revoke a signal employee's certification. While the dispute resolution process for signal employees largely mirrors the processes for engineers under part 240 and conductors under part 242, FRA has undertaken efforts to simplify these regulations to make them clear and comprehensible to all interested parties.

Section 246.403 Petition Requirements

This section contains requirements for obtaining FRA review of a railroad's decision to deny or revoke certification or deny recertification.

Paragraph (b) of this section requires petitioners to seek review in a timely fashion once the adverse decision is served on them. In the interest of consistency and uniformity with parts 240 and 242, petitioners have 120 days from the date the adverse decision was served upon them to file a petition for review by the CRB.

Paragraph (b)(6) requires petitioners or their representatives to state the facts and arguments in support of their petition. In other words, they need to explain to the CRB why they think the railroad was incorrect in denying or revoking the petitioner's certification. Paragraph (b)(7) requires petitioners to submit all documents related to the railroad's decision that are in their possession or reasonably available to them. This may include the transcript and exhibits from the petitioner's denial or revocation hearing. In most cases, these documents will be essential to the Board's ability to make an informed decision on the petition.

IBEW commented that FRA should add language to this section requiring railroads to produce all records requested by the petitioner. However, FRA does not think such a change is necessary because IBEW's concern is already addressed by § 246.405(b) which requires a railroad to supplement the record with any relevant documents in its possession that were not provided by the petitioner. This helps ensure the CRB will have a complete record when the case is ready for their review.

Section 246.405 Processing Certification Review Petitions

This section, derived from 49 CFR 240.405 and 242.505, details how petitions for review by the CRB will be handled. Paragraph (a) of this section notes that, when FRA receives a CRB petition, FRA will send a written notification to the parties involved in the petition. FRA will send these acknowledgments via email. If a representative files a petition on behalf of a petitioner, the petition must include the petitioner's email address if the petitioner also wants to receive the acknowledgment email and any other correspondence (including the Board's decision) from FRA. The acknowledgment email will include the docket number for the petition, so that both parties can access the documents in the case on *https://www.regulations.gov.* FRA will not send a copy of the petition to the railroad.

Paragraph (b) of this section provides railroads with the opportunity to respond to a petition. While it is always optional for a railroad to respond to a petitioner's arguments, if the petitioner did not include relevant documents in their petition, such as hearing transcripts or exhibits, the railroad is required to provide FRA with those documents, even if it does not respond to the arguments in the petition. Railroads have 60 days, from the date FRA sends the acknowledgment email, to file a response to the petition in the docket on *https://www.regulations.gov.* Railroads are permitted to submit responses after the 60-day deadline, but the Board will only review such late filings if practicable. In other words, there is no guarantee that the Board will review a late response prior to issuing a decision. Thus, if a railroad wishes to respond to a petition, it should meet the 60-day filing deadline. The railroad will fulfill its requirement to serve a copy of its response on the other parties by sending its response via email to petitioner, and the petitioner's representative (if any).

Paragraph (c) of this section explains when a case will be referred to the Board, and the Board's authority. If a railroad files a response before the 60-day deadline in paragraph (b) of this section, the petition will be referred to the Board upon receipt of the response. Otherwise, the petition will be referred to the Board 60 days after the date FRA sends the acknowledgment email. The Board has the authority to grant a petition (rule in favor of the petitioner), deny a petition (rule in favor of the railroad), or dismiss a petition. An example of when the Board would dismiss a petition would be if the respondent railroad did not deny or revoke the petitioner's certification, and thus, there was no case or controversy before the Board. If there is insufficient evidence in the record for the Board to decide on the merits of a petition, the Board may choose to remand a petition or issue an interim order, so that additional fact-finding can occur.

Paragraphs (d), (e), and (f) of this section provide the standards of review that the Board will employ for procedural issues, factual issues, and legal issues, respectively. These standards mirror the standards of review used to review locomotive engineer and conductor petitions. The Board will not correct all procedural errors committed by a railroad. Instead, in such cases, the Board will only grant a petition if the respondent railroad's procedural error caused substantial harm to the

petitioner. For factual issues, the petitioner is required to show that the respondent railroad did not have substantial evidence to support its decision to deny or revoke the petitioner's certification. If the Board must decide a legal issue, it will conduct *de novo* review, meaning that it would not give deference to any decision or interpretation made by the railroad.

Paragraph (g) of this section acknowledges that the Board's decision-making power is limited to granting or denying a petition. In other words, the Board is only empowered to make determinations concerning qualifications under this regulation. The Board is not empowered to mitigate the consequences of a railroad decision if the decision is valid under this regulation. The contractual consequences, if any, of these determinations will have to be resolved under dispute resolution mechanisms that do not directly involve FRA. For example, FRA cannot order a railroad to alter its seniority rosters or make an award of back pay, in the event of a finding that a railroad wrongfully denied certification.

Paragraph (h) of this section requires the Board to issue a written decision that will be served on all affected parties. FRA will send the decision to the parties by email and it will also be posted in the case's docket on *https://www.regulations.gov.*

Section 246.407 Request for a Hearing

This section, derived from 49 CFR 240.407 and 49 CFR 242.507, discusses the process for requesting an administrative hearing after a party has been adversely affected by a CRB decision. Paragraph (b) of this section provides that the adversely affected party must file their request for a hearing within 20 days of service of the CRB's decision. Just like CRB petitions, parties must file hearing requests electronically. To file a hearing request, the adversely affected party must upload the request to the docket on *https://www.regulations.gov* that was used while the case was before the Board. This docket will also be used to file documents while the case is before the hearing officer.

BRS, TTD, and IBEW commented on paragraph (b) and recommended that FRA increase the 20-day period for filing a request for hearing. BRS recommended increasing the filing period to 90 days, while TTD and IBEW recommended a 60-day filing period. In support of their recommendations, these labor organizations asserted that 20 days is an inadequate amount of time for the aggrieved party to confer with their representative, determine the best course of action, and then compile the information required in paragraph (c) to complete a request.

However, the required contents for hearing requests, as set forth in paragraph (c) of this section, are minimal, and are similar to the requirements in § 246.403(b) for filing a petition with the CRB. Thus, if the certified signal employee is the aggrieved party, most of the information needed for the hearing request can be found in their CRB petition. FRA does not foresee any major hinderance that would prevent a certified signal employee or railroad from completing a hearing request within the 20 days currently allotted. Moreover, a similar 20-day deadline has been in effect for over a decade for conductors and for over 30 years for locomotive engineers. FRA is unaware of any major issues parties have had with meeting this deadline, and therefore disagrees with the recommendation to change this deadline for certified signal employees.

Appendices

This final rule has two appendices. Appendix A, derived from appendix C to part 240 and appendix C to part 242, provides a narrative discussion of the procedures that a person seeking signal employee certification or recertification should follow to furnish a railroad with information concerning their motor vehicle driving record. Appendix B, derived from appendix D to part 240 and appendix D to part 242, provides a narrative discussion of the procedures that a railroad will be required to employ when administering the vision and hearing requirements of §§ 246.117 and 246.118.

FRA made minor revisions to appendix A from what appeared in the proposed rule. In paragraph (2), FRA added language noting that the information in a certification candidate's motor vehicle driving records that the railroad should consider is described in § 246.111(m). FRA also added language to paragraph (4) to clarify that under § 246.301, a railroad is only required to provide a candidate for signal employee certification or recertification with a copy of their motor vehicle driving records if the records contain information that could be the basis for denying certification (or recertification). If no such adverse information exists, the railroad is not required to provide the candidate with a copy of these records.

V. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094

This final rule is not a significant regulatory action within the meaning of Executive Order 12866 as amended by Executive Order 14094, Modernizing Regulatory Review. Details on the estimated costs of this final rule can be found in the Regulatory Impact Analysis (RIA), which FRA has prepared and placed in the docket (FRA–2022–0020).

FRA is issuing regulations establishing a formal certification process for railroad signal employees. As part of that process, railroads will be required to develop a program for training current and prospective signal employees, documenting and verifying that the holder of the certificate has achieved certain training and proficiency, and creating a record of safety compliance infractions that other railroads can review when considering individuals for certification. This final rule will ensure that signal employees are properly trained, are qualified to perform their duties, and meet Federal safety standards. Additionally, this regulation is expected to improve railroad safety by reducing the rate of accidents/incidents.

The RIA presents estimates of the costs likely to occur over the first 10 years of the final rule. The analysis includes estimates of costs associated with development of certification programs, initial and periodic training, knowledge testing, and monitoring of operational performance. Additionally, costs are estimated for vision and hearing tests, review of certification determinations made by other railroads, and Government administrative costs.

FRA estimated 10-year costs of $9.4 million discounted at 7 percent. The annualized cost will be approximately $1.3 million discounted at 7 percent. The following table shows the estimated 10-year costs of the final rule.

TOTAL 10-YEAR DISCOUNTED COSTS

[2020 Dollars]

Category	Present Value 7% ($)	Present Value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Development of Certification Program	1,504,135	1,541,874	214,155	180,755
Certification Eligibility Requirements	202,952	227,006	28,896	26,612
Recertification Eligibility Requirements	243,632	310,417	34,688	36,390
Training	2,079,835	2,379,911	296,122	278,998
Knowledge Testing	746,865	898,884	106,337	105,377
Vision and Hearing	1,097,523	1,320,891	156,263	154,849
Monitoring Operational Performance	1,178,812	1,408,753	167,836	165,149
Railroad Oversight Responsibilities	267,530	326,714	38,090	38,301
Certification Card	103,175	124,175	14,690	14,557
Petitions and Hearings	181,733	217,183	25,875	25,460
Government Administrative Cost	1,780,113	2,065,541	253,448	242,144
Total	9,386,306	10,821,350	1,336,399	1,268,592

The primary benefit of this final rule is that it will ensure that railroads properly train and monitor signal employee performance to reduce the risk of accidents caused by signal employee error. This rule will allow railroads to revoke certification of signal employees who make serious safety-related violations.

This rule is expected to reduce the likelihood of an accident occurring due to signal employee error. FRA has analyzed accidents over the past 10 years to categorize those where signal employee training and certification would have impacted the accident. FRA estimated benefits from fewer train accidents, grade crossing accidents, and activation failures.

The following table shows the estimated 10-year benefits of the final rule. The total 10-year estimated benefits will be $2.9 million (PV, 7%) and annualized benefits will be $0.4 million (PV, 7%).

TOTAL 10-YEAR DISCOUNTED BENEFITS

[2020 Dollars]

Category	Present Value 7% ($)	Present Value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Grade Crossing Accidents	1,766,028	2,064,676	251,443	242,043
Train Accidents/Incidents	960,671	1,123,127	136,778	131,665
Business Benefits from Fewer Activation Failures (Railroad Industry)	53,817	62,917	7,662	7,376
Business Benefits from Fewer Activation Failures (Government)	87,985	102,863	12,527	12,059
Total	2,868,501	3,353,584	408,410	393,142

FRA has quantified the monetary impact from accidents reported on FRA accident forms. However, some accident costs are not required to be reported on FRA accident forms (*e.g.,* environmental impact). For example, the cost of property damage represents a portion of the total cost of train accidents, such as, the cost of direct labor and damage to on-track equipment, track, track structures, and roadbed. Other direct accident costs, such as accident clean up, third-party property damage, lost lading, environmental damage, loss of economic activity to the community, and train delays are not included in FRA's accident/incident reportable damages from the railroads. That impact may account for additional benefits not quantified in this analysis. If these costs not covered by FRA data were realized, accidents affected by this rulemaking could have much greater economic impact than the quantitative benefit estimates provided here.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 [52] and Executive Order 13272 [53] require agency review of proposed and final rules to assess their impacts on small entities. FRA prepared this FRFA to evaluate the impact of the final rule on small entities and describe the effort to minimize the adverse impact. The estimated costs on small entities is not significant as it represents less than one percent of average annual revenue of affected entities. Accordingly, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the Need for, and Objectives of, the Rule

FRA perceives the potential for signal employee error to cause accidents, and an existing lack of means to evaluate and address this risk. Railroads' signal employee training programs may not be covering all aspects of a signal employee's job responsibility. Additionally, railroads may not be testing signal employees and ensuring that their knowledge is maintained continuously.

DOT's general authority states, in relevant part, that the Secretary ''as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16,

[52] 5 U.S.C. 601 *et seq.*

[53] 67 FR 53461 (Aug. 16, 2002).

1970.'' [54] The Secretary delegated this authority to the Federal Railroad Administrator.[55] The RSIA required the Secretary to submit a report to Congress addressing whether certification of certain crafts or classes of railroad employees or contractors was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety. If the Secretary determined certification of certain crafts or classes was necessary to meet these goals, Congress also authorized the Secretary to promulgate regulations requiring certification. In the report to Congress, the Secretary noted that signal repair employees, along dispatchers, were the most viable candidates for certification. This final rule will require railroads to develop a signal employee certification program. The final rule will help ensure that signal employees are properly trained, qualified to perform their duties, and meet Federal safety standards.

2. Significant Issues Raised by Public Comments

FRA received several comments related to the costs of the proposed rule. ASLRRA and AAR submitted comments related to the proposed rule. Issues not concerning the economics of the rule have been discussed above in the discussion of comments and conclusions. Comments were received from ASLRRA relating to the cost estimates for developing the certification programs, petitions and hearings, and annual monitoring. FRA has revised costs for developing certification programs, estimating 550 hours for ASLRRA to develop a model or template program, as suggested by ASLRRA in their comment. Additionally, FRA has increased the time for individual railroads to develop their plan based on the template. The estimated time per railroad has been increased to 15 hours (from 8 hours in the RIA for the proposed rule).

Further, FRA has revised the cost for petitions and hearings, adding additional job categories and slightly increasing the time estimated per petition and hearing.

3. Response to Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration

FRA did not receive any comments from the Small Business Administration.

4. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 1,500 employees, a ''commuter rail system'' with annual receipts of less than $47.0 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than $34.0 million.[56]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a proposed statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR part 1201, General Instruction 1–1, which is $20 million or less in inflation-adjusted annual revenues,[57] and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[58] FRA is using this definition for the final rule.

When developing the rule, FRA considered the impact that the rule would have on small entities. FRA has provided additional time for Class III railroads to comply with the final rule as compared to Class I railroads.

The final rule would be applicable to all railroads with signal systems. However, some small railroads do not have a signal system as part of their operations. FRA estimates there are 744 Class III railroads, of which 704 operate on the general system. These railroads are of varying size, with some belonging to larger holding companies. Approximately 490 Class III railroads will be impacted by this rulemaking because they have a signal system. The remaining Class III railroads do not have a signal system, thus will have no need for signal employee certification program.

5. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

The final rule requires Class III railroads to develop and implement a Signal Employee Certification Program. This includes certifying and recertifying signal employees, vision and hearing tests, training, knowledge testing, and monitoring operational performance.

The following table shows the annualized costs for all provisions of the final rule. The total annualized cost for all Class III railroads is $434,884 (PV, 7 percent).

ANNUALIZED COSTS FOR CLASS III RAILROADS

Category	Annualized 7% ($)
Development of Certification Program	110,011
Certification Eligibility Requirements	7,224
Recertification Eligibility Requirements	8,672
Training	74,030
Knowledge Testing	26,584
Vision and Hearing	156,263
Monitoring Operational Performance	41,959

[54] 49 U.S.C. 20103.

[55] 49 CFR 1.89(a).

[56] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' March 27, 2023. *https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[57] The Class III railroad revenue threshold is $46.3 million or less, for 2022. *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-C/part-1201.*

[58] *See* 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

ANNUALIZED COSTS FOR CLASS III RAILROADS—Continued

Category	Annualized 7% ($)
Certification Card	3,672
Petitions and Hearings	6,469
Total	434,884

The industry trade organization representing small railroads, ASLRRA, reports the average freight revenue per Class III railroad is $4.75 million.[59] The following table summarizes the average annual cost and revenue for Class III railroads.

ANNUAL CLASS III RAILROADS' COST AND REVENUE

Total costs for all Class III railroads, annualized 7 percent ($)	Number of Class III railroads impacted by final rule	Average annual cost per Class III railroad ($)	Average Class III railroad annual revenue ($)	Average annual cost as percent of revenue
a	b	c = a ÷ b	d	e = c ÷ d
434,884	535	813	4,750,000	0.02%

The estimated average annual cost for a Class III railroad is $813. This represents a small percentage (0.02%) of the average annual revenue for a Class III railroad.

6. A Description of the Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities

This final rule requires railroads to develop a signal employee certification program. Small railroads may use a template of a certification program developed by ALSRRA to comply with the final rule. Therefore, the burden on small entities is mostly for certifying signal employees. Many small railroads contract signal employee service to a third party. Signal employees will be required to be certified by each railroad that they work for, but the contractor may be involved in the process which would lessen the burden on individual short line railroads.

FRA has allowed Class III railroads additional time to develop their certification programs. Class III railroads will have 16 months after the effective date of the final rule to submit a certification program, whereas Class I railroads must submit a plan within 8 months. FRA will also not require Class III railroads to conduct annual reporting as required by § 246.215 Railroad Oversight Responsibilities.

C. Paperwork Reduction Act

The information collection requirements for part 246 are being submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.[60] This submission reflects adjustments in response to comments on program development costs discussed above. These changes impacted the paperwork burden under 49 CFR 246.101 and 246.103. The adjustments increased the burden from 7,682 hours to 10,726 hours since the NPRM publication. This table contains new information collection requirements, and the estimated time to fulfill each requirement is as follows:

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
246.9—Waivers—Petitions	553 railroads	10.00 petition	3 hours	30.00	$77.44	$2,323.20
246.101/.103—Certification program required and FRA review of certification program—Development of signal employee certification program in accordance with this part and procedures contained under § 246.106 (Note: Each certification program includes procedure requirements under § 246.111 through § 246.124.).	553 railroads + ASLRRA and holding companies.	182.66 plans (14 Class I and commuter railroads plans + 0.33 generic program developed by ASLRRA and holding companies plans + 168.33 Class II and III railroads plans).	120 hours + 550 hours + 15 hours.	6,204.78	115.24	715,038.85
—(d)(1) Signal employees certification submission—Copies of the program provided to the president of each rail labor organization (RLO) that represents the railroad's employees that are subject to this part.	553 railroads	2 copies	15 minutes	.50	77.44	38.72
—(d)(2) Affirmative statements that the railroad has provided a copy of the program to RLOs.	553 railroads	2 affirmative statements	15 minutes	.50	77.44	38.72

[59] American Short Line and Regional Railroad Association, *Short Line and Regional Railroad Facts and Figures,* p. 10 (2017 pamphlet).

[60] 44 U.S.C. 3501 *et seq.*

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(e) Comment Period—Affirmed comments on a railroad's program by any designated representative of employees subject to this part or any directly affected employee who does not have a designated representative.	553 railroads	31 comments	4 hours	124.00	77.44	9,602.56
—(g) Material Modifications of FRA-approved program—Railroad to submit a description of how it intends to modify the program and a copy of the modified program to FRA.	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					
—(h) Resubmission—Railroad can resubmit its program or material modification as described in paragraph (f)(2) of this section after addressing all of the deficiencies noted by FRA and the resubmission must conform with the procedures and requirements contained in § 246.106.	553 railroads	3.67 revised plans Class I and commuter railroads.	20 hours	73.40	77.44	5,684.10
—(i) Rescinding Prior Approval of Program—Railroad to resubmit its certification program and the program must conform with the procedures and requirements contained in § 246.106.	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					
246.105(c)(1) and (d)(1)—Implementation schedule for certification programs—Designation of certified signal employee.	553 railroads	3,781 designated lists	5 minutes	315.08	77.44	24,399.80
—(c)(2) and (d)(2) Issue a certificate that complies with § 246.207 to each person that it designates.	553 railroads	3,781 issued certificates.	3 minutes	189.05	77.44	14,640.03
—(f) Written requests for delayed certification—Railroad may wait to recertify the person making the request until the end of the three-year period after FRA has approved the railroad's certification program.	FRA anticipates zero submissions.					
—(g) Testing and evaluation—Railroad shall only certify or recertify a person as a signal employee if that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.	The paperwork burden for testing and evaluation is included in the economic burden and the burden for certificates is included under § 246.105.					
246.106—Requirements for Certification Programs—Procedures for Submission and Approval of Signal Employee Certification Programs.	The paperwork requirements described in this section are accounted for throughout this table.					
246.109(a)—Determinations required for certification and recertification—Eligibility requirements.	The paperwork burden for this requirement is covered under § 246.111 through § 246.121 and § 246.303.					
246.111(a) through (c)—Prior safety conduct as motor vehicle operator—Eligibility requirements of this section involving prior conduct as a motor vehicle operator.	553 railroads	1,706 motor vehicle records.	5 minutes	142.17	77.44	11,009.64
—(e) If driver information is not obtained as required pursuant to paragraph (g) of this section, that person or the railroad certifying or recertifying that person may petition for a waiver in accordance with the provisions of part 211 of this chapter.	553 railroads	2 waivers	2 hours	4.00	77.44	309.76
—(f) Individual's duty—Consent to make information concerning driving record available to that railroad.	This is usual and customary procedure. The consent form is signed at the time of hiring to make driving information available to the railroad.					
—(g) and (h) Request to obtain driver's license information from licensing agency.	553 railroads	1,706 written requests	5 minutes	142.17	59.00	8,388.03
—(i) Requests for additional information from licensing agency.	The paperwork burden for this requirement is included under § 246.111(g)–(h).					
—(j) Notification to railroad by persons of never having a license.	553 railroads	2 notices	10 minutes	.33	77.44	25.56

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(k) Report of motor vehicle incidents described in paragraphs (m)(1) and (2) of this section to the employing railroad within 48 hours.	553 railroads	40 self-reports	10 minutes	6.67	77.44	516.52
—(l) and (m) Evaluation of person's driving record by railroad.	553 railroads	1,706 motor vehicle record evaluations.	5 minutes	142.17	71.89	10,220.60
—(n)(1) DAC referral by railroad after report of driving drug/alcohol incident.	553 railroads	36 DAC referrals	5 minutes	3.00	115.24	345.72
—(n)(2) DAC request and supply by persons of prior counseling or treatment.	553 railroads	1 request and supplied record.	30 minutes	.50	115.24	57.62
—(n)(3) Conditional certifications recommended by DAC.	553 railroads	3 conditional certification recommendations.	4 hours	12.00	115.24	1,382.88
246.113(b)—Prior safety conduct as an employee of a different railroad—Certification candidate has not been employed by any other railroad in the previous five years, they do not have to submit a request in accordance with paragraph (d) of this section, but they must notify the railroad of this fact in accordance with procedures established by the railroad in its certification program.	This is usual and customary procedure and therefore there is no paperwork burden.					
—(c) Person seeking certification or recertification under this part shall submit a written request to each railroad that employed the person within the previous five years.	553 railroads	43.00 requests	15 minutes	10.75	77.44	832.48
—(e) Railroad shall provide the information requested to the railroad designated in the written request.	553 railroads	43.00 records	15 minutes	10.75	77.44	832.48
—(f) An explanation shall state why the railroad cannot provide the information within the requested time frame or cannot provide the requested information.	FRA anticipates zero submissions.					
246.115(a)—Substance abuse disorders and alcohol drug rules compliance—Determination that person meets eligibility requirements.	553 railroads	1,535 determinations	2 minutes	51.17	77.40	3,960.56
—(b) Written documents from DAC that person is not affected by a disorder.	553 railroads	79 filed documents	30 minutes	39.50	115.24	4,551.98
—(c)(3) Fitness requirement—Voluntary self-referral by signal employee for substance abuse counseling or treatment under the policy required by § 219.1001 of this chapter.	553 railroads	2 self-referrals	10 minutes	.33	115.24	38.03
—(d)(1) and (2) Prior alcohol/drug conduct; Federal rule compliance.	553 railroads	1,535 certification reviews.	10 minutes	255.83	115.24	29,481.85
—(d)(3)(i) Written determination that most recent incident has occurred.	553 railroads	30 written determinations.	1 hour	30.00	115.24	3,457.20
—(d)(3)(ii) Notification to person that recertification has been denied or certification suspended.	553 railroads	30 notifications	30 minutes	15.00	77.44	1,161.60
—(d)(4) Persons/conductors waiving investigation/de-certifications.	553 railroads	20 waived investigations.	10 minutes	3.33	77.44	257.88
246.117(a) through (c)—Visual acuity—Determination visual acuity standards met—Medical examiner certificate/record.	553 railroads	400 records	2 minutes	13.33	71.89	958.29
—(d)(1) Request for retest and another medical evaluation—Medical examiner certificate/record.	553 railroads	10 records	2 minutes	.33 hours	$71.89	$23.72
—(d)(2) Railroad to provide a copy of this part to medical examiner.	553 railroads	400 copies	5 minutes	33.33	71.89	2,396.09
—(d)(3) Consultations by medical examiners with railroad officer and issue of conditional certification.	553 railroads	5 consultations + 5 conditional certifications.	30 minutes + 10 minutes.	3.33	71.89	239.39
—(g) Notification by certified signal employee of deterioration of vision.	553 railroads	1 notification	10 minutes	.17	71.89	12.22
246.118(a) through (c)—Hearing acuity—Determination hearing standards met—Medical records.	553 railroads	400 medical records	2 minutes	13.33	71.89	958.29
—(d)(1) Request for retest and another medical evaluation—Medical examiner certificate/record.	553 railroads	10 records	2 minutes	.33	71.89	23.72
—(d)(2) Railroad to provide a copy of this part to medical examiner.	553 railroads	400 copies	5 minutes	33.33	71.89	2,396.09

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(d)(3) Consultations by medical examiners with railroad officer and issue of conditional certification.	553 railroads	5 consultations + 5 conditional certifications.	30 minutes + 10 minutes.	3.33	71.89	239.39
—(g) Notification by certified signal employee of deterioration of hearing.	553 railroads	25 notifications	10 minutes	4.17	71.89	299.78
246.119(b)—Training requirements—A railroad's election for the training of signal employees shall be stated in its certification program.	The paperwork burden for this requirement is covered under § 246.101/.103.					
—(c) Initial training program for previously untrained person to be a signal employee.	553 railroads	184 training programs	3 hours	553.00 hours	115.24	63,727.72
—(c)(3) Modification to training program when new safety-related railroad laws, regulations and etc. are introduced into the workplace.	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					
—(d) Relevant information or materials on safety or other rules made available to certification candidates.	The paperwork burden for this requirement is covered under § 246.101/.103.					
—(e) Completion of initial training program by a previously untrained person being certified as a signal employee—Written documentation showing person completed training program and demonstrated qualification.	553 railroads	3,781 written documents or records.	10 minutes	630.17	77.44	48,800.36
—(f) Completion of training program, demonstration of knowledge, on-the-job proficiency, and qualification—Written documentation for each signal employee certified by the railroad.	The paperwork burden for this requirement is covered under § 246.119.					
—(h) Familiarization training for signal employees of acquiring railroad from selling company/railroad prior to commencement of new operation.	FRA anticipates zero submissions.					
—(i) Continuing education of certified signal employees.	553 railroads	2,000 training records	15 minutes	500.00	71.89	35,945.00
246.120—Requirements for qualification —Determining eligibility.	The paperwork burden for this requirement is covered under § 246.119.					
—(b) Notification by persons not qualified on the signal system.	The paperwork burden for this requirement is covered under § 246.119.					
246.121(a) through (c)—Knowledge testing—Determining eligibility.	553 railroads	2,000 test records	5 minutes	166.67	77.44	12,906.92
—(d) Reexamination of the failed test	553 railroads	20 examination records	5 minutes	1.67	77.44	129.32
246.123(d)—Monitoring operational performance—Unannounced compliance tests—Retention of a written record.	553 railroads	7,348 records	2 minutes	244.93	77.44	18,967.38
246.124—Mentoring	The paperwork burden for this requirement is covered under § 246.101/.103.					
246.125—Certification determinations made by other railroads.	553 railroads	11.00 determinations	30 minutes	5.50	77.44	425.92
246.203(b)—Retaining information supporting determination—Records.	553 railroads	2,000 record retentions	15 minutes	500.00	77.44	38,720.00
—(g) Electronic records	553 railroads	2 amended record	15 minutes	.50	77.44	38.72
246.205—List of certified signal employees and recordkeeping..	The paperwork requirement for this burden is covered under § 246.105(c)(1)–(d)(1).					
246.207 (a) through (e)—Certificate requirements.	The paperwork requirement for this burden is covered under § 246.105(c)(2)–(d)(2).					
—(f) and (g) Replacement of certificates	553 railroads	45 replacement certificates.	5 minutes	3.75	77.44	290.40
—(h) Notification by signal employees that railroad request to serve exceeds certification.	553 railroads	110 notifications	30 seconds	.92	71.89	66.14
246.213(c) through (h)—Multiple Certificates—Notification of denial of certification or recertification by individuals holding multiple certifications.	553 railroads	3 notifications	10 minutes	.50	77.44	38.72

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) [1]	Total cost equivalent (E) = C * D
—(i) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified in multiple crafts.	The paperwork requirement for this burden is covered under § 246.105.					
246.215—Railroad oversight responsibilities—Review and analysis of administration of certification program.	553 railroads	17.33 annual reviews and analyses.	8 hours	138.64	115.24	15,976.87
—(d) Report of findings and conclusions reached during annual review by railroad (if requested in writing by FRA, RLO president, or certified signal employee not represented by a labor organization) review and analysis effort.	553 railroads	2 reports	4 hours	8.00	115.24	921.92
246.301(a)—Denial of certification—Notification to candidate of information and provision of documents that form basis for denying certification and candidate response.	553 railroads	6 notices + 3 responses	1 hour	9.00	77.44	696.96
—(b) Denial Decision Requirements—Written notification of denial of certification or recertification by railroad to candidate.	553 railroads	6 notifications	1 hour	6.00 hours	77.44	464.64
246.307(b)(1) through (5)—Process for revoking certification—Immediate suspension of signal employee's certification, notifications, and provision of written information and list of witnesses.	553 railroads	15 suspended certification letters and documentations.	30 minutes	7.50	77.44	580.80
—(b)(6) Determinations based on the record of the hearing, whether revocation of the certification is warranted.	The paperwork requirement for this burden is covered under § 246.307(e).					
—(b)(8) Retention of record of the hearing for three years after the date the decision is rendered.	553 railroads	15 records	15 minutes	3.75	77.44	290.40
—(d)(9) Hearing Procedures—Written waiver of right to hearing.	553 railroads	3 written waivers	10 minutes	.50	59.00	29.50
—(e) Revocation Decision Requirements—Written decisions by railroad official.	553 railroads	15 written decisions and service of decisions.	2 hours	30.00	115.24	3,457.20
—(g) Revocation of certification based on information that another railroad has done so.	553 railroads	3 revoked certifications	10 minutes	.50	115.24	57.62
—(j) Placing relevant information in record if sufficient evidence meeting the criteria in paragraph (h) or (i) of this section becomes available.	The paperwork requirement for this burden is covered under § 246.307(b)(7).					
—(k) Good faith determination	553 railroads	3 good faith determinations.	1 hour	3.00	77.44	232.32
Subpart E—Dispute Resolution Procedures—§ 246.401 through § 246.411.	The requirements under these provisions are exempted from the PRA under 5 CFR 1320.4(a)(2). Since these provisions pertain to an administrative action or investigation, there is no PRA burden associated with these requirements.					
Appendix A to part 246—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data.	The paperwork requirements described in this appendix are accounted for throughout this table.					
Appendix B to part 246—Medical Standards Guidelines.	The paperwork requirements described in this appendix are accounted for throughout this table.					
Totals [2]	553 railroads + ASLRRA and holding companies.	35,571 responses	N/A	10,726	N/A	1,098,908

[1] Throughout the tables in this document, the dollar equivalent cost is derived from the 2020 Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.
[2] Totals may not add due to rounding.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: 571–609–1285, or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: at 757–897–9908.

OMB is required to decide concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this document. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. The current OMB control number for this rule is 2130–0638.

D. Federalism Implications

Executive Order 13132, Federalism,[61] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, to the extent practicable and permitted by law, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979[62] prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Assessment

FRA has evaluated this final rule consistent with the National Environmental Policy Act[63] (NEPA), the Council of Environmental Quality's NEPA implementing regulations,[64] and FRA's NEPA implementing regulations[65] and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[66] Specifically, FRA has determined that this rule is categorically excluded from detailed environmental review.[67]

The main purpose of this rulemaking is to establish certification requirements for signal employees. This final rule will not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[68] FRA has concluded that no such unusual circumstances exist with respect to this regulation and the final rule meets the requirements for categorical exclusion.[69]

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[70] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[71] Further, FRA reviewed this rule and found it consistent with Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.''

G. Environmental Justice

Executive Order 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All,'' which expands on Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns. DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.[72] FRA has evaluated this final rule under Executive Orders 14096 and 12898 and DOT Order 5610.2C and has determined it will not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[73] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act[74] further

[61] 64 FR 43255 (Aug. 10, 1999).

[62] 19 U.S.C. Ch. 13.

[63] 42 U.S.C. 4321 *et seq.*

[64] 40 CFR parts 1500 through 1508.

[65] 23 CFR part 771.

[66] 40 CFR 1508.4.

[67] *See* 23 CFR 771.116(c)(15) (categorically excluding ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise'').

[68] 23 CFR 771.116(b).

[69] 23 CFR 771.116(c)(15).

[70] *See* 54 U.S.C. 306108.

[71] *See* DOT Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[72] Executive Order 14096 is not currently referenced in DOT Order 5610.2C.

[73] Public Law 104–4, 2 U.S.C. 1531.

[74] 2 U.S.C. 1532.

requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [75] FRA evaluated this final rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

J. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this rule in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. This rule will not have a substantial direct effect on one or more Indian Tribes, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a Tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 246

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

The Rule

■ For the reasons discussed in the preamble, FRA amends chapter II, subtitle B, of title 49 of the Code of Federal Regulations, by adding part 246 to read as follows:

[75] 66 FR 28355 (May 22, 2001).

PART 246—CERTIFICATION OF SIGNAL EMPLOYEES

Sec.

Subpart A—General

246.1 Purpose and scope.
246.3 Application and responsibility for compliance.
246.5 Effect and construction.
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Subpart B—Program and Eligibility Requirements

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246.103 FRA review of certification programs.
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246.106 Requirements for certification programs.
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246.303 Criteria for revoking certification.
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246.401 Review board established.
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246.407 Request for a hearing.
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246.411 Appeals.
Appendix A to Part 246—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data
Appendix B to Part 246—Medical Standards Guidelines

Authority: 49 U.S.C. 20103, 20107, 20162, 21301, 21304, 21311; 28 U.S.C. 2461 note; 49 CFR 1.89; and Pub. L. 110–432, sec. 402, 122 Stat. 4884.

Subpart A—General

§ 246.1 Purpose and scope.

(a) The purpose of this part is to ensure that only those persons who meet minimum Federal safety standards serve as certified signal employees, to reduce the rate and number of accidents and incidents, and to improve railroad safety.

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all signal employees to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements consistent with this part.

(c) The signal employee certification requirements prescribed in this part apply to any person who meets the definition of signal employee contained in § 246.7, regardless of the fact that the person may have a job classification title other than that of signal employee.

§ 246.3 Application and responsibility for compliance.

(a) This part applies to all railroads, except:

(1) Railroads that do not have a signal system as defined in § 246.7;

(2) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* plant railroads, as defined in § 246.7);

(3) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 246.7; or

(4) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, as defined in § 246.7, who performs any function required by this part must perform that function in accordance with this part.

§ 246.5 Effect and construction.

(a) FRA does not intend, by use of the term signal employee in this part, to alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying a person who is engaged in installing, troubleshooting, testing, repair, or maintenance of railroad signal systems and signal-related technology.

(b) FRA does not intend by issuance of these regulations to alter the authority of a railroad to initiate disciplinary

sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(c) Except as provided in § 246.213, nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(d) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

§ 246.7 Definitions.

As used in this part:

Administrator means the Administrator of the FRA or the Administrator's delegate.

Alcohol means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

Contractor means a person under contract with a railroad, including but not limited to, a prime contractor or a subcontractor.

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301 through 1316).

Disable means to render a device or system incapable of proper and effective action or to materially impair the functioning of that device or system.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

Drug and alcohol counselor (DAC) means a person who meets the credentialing and qualification requirements of a ''Substance Abuse Professional'' (SAP), as provided in 49 CFR part 40.

File, filed, and *filing* mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail, the date mailing was completed.

FRA means the Federal Railroad Administration.

FRA representative means the FRA Associate Administrator for Railroad Safety/Chief Safety Officer and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified State railroad safety inspector acting under part 212 of this chapter.

Ineligible or *ineligibility* means that a person is legally disqualified from serving as a certified signal employee. The term covers a number of circumstances in which a person may not serve as a certified signal employee. Revocation of certification pursuant to § 246.307 and denial of certification pursuant to § 246.301 are two examples in which a person would be ineligible to serve as a certified signal employee. A period of ineligibility may end when a condition or conditions are met, such as when a person meets the conditions to serve as a certified signal employee following an alcohol or drug violation pursuant to § 246.115.

Knowingly means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

Medical examiner means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical examiner owes a duty to make an honest and fully informed evaluation of the condition of an individual.

Mentor means a certified signal employee who has at least one year of experience as a certified signal employee. For purposes of this part, a mentor provides direct and immediate supervision over the work of one or more signal employees.

On-the-job training means job training that occurs in the workplace, *i.e.,* the employee learns the job while doing the job.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor or subcontractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor.

Physical characteristics means the actual track profile of and physical location for points within a specific yard or route that affect the movement of a locomotive or train. Physical characteristics includes how signal systems and related technology are deployed within the territory, for purposes of this part.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Qualified means a person who has successfully completed all instruction, training and examination programs required by the railroad, and the applicable parts of this chapter and that the person therefore may reasonably be expected to be proficient on all safety related tasks the person is assigned to perform.

Qualified instructor means a person who has demonstrated, pursuant to the railroad's written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary signal experience to effectively instruct in the field, and has the following qualifications:

(1) Is a certified signal employee under this part; and

(2) Has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present; or

(3) In the absence of concurrence provided in paragraph (2) of this definition, has a minimum of 12 months service working as a signal employee.

If a railroad does not have designated employee representation, then a person employed by the railroad need not comply with paragraph (2) or (3) of this definition to be a *qualified instructor.*

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad officer means any supervisory employee of a railroad.

Serve or service, in the context of serving documents, has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. *See also* the definition of ''filing'' in this section.

Signal employee means, for purposes of this part, a person who is engaged in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems or related technology.

Signal instructor means, for purposes of this part, a person who has demonstrated, pursuant to the railroad's written signal employee certification program, an adequate knowledge of the subject matter under instruction and has the necessary experience to effectively provide formal training of the subject matter.

Signal system, for purposes of this part, includes software and equipment for the following: block signal systems, cab signal systems, train control systems, positive train control systems, highway-rail and pathway grade crossing warning systems, unusual contingency detection devices, power-assisted switches, broken rail detection systems, switch point indicators, as well as other safety-related devices, appliances, technology, and systems installed on the railroad in signaled or non-signaled territory.

Substance abuse disorder refers to a psychological or physical dependence on alcohol or a drug, or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is ''active'' within the meaning of this part if the person is currently using alcohol or other drugs, except under medical supervision consistent with the restrictions described in § 219.103 of this chapter or has failed to successfully complete primary treatment or successfully participate in aftercare as directed by a DAC or SAP.

Substance Abuse Professional (SAP) means a person who meets the qualifications of a substance abuse professional, as provided in 49 CFR part 40.

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

Unusual contingency detection device means a device used in the detection of defective conditions on locomotives and rolling stock (*e.g.,* high-wide load, hot or defective bearing, defective wheel detectors) or other unsafe environmental conditions (*e.g.,* high-water, high wind, sliding or slumping soil, rock or snow slide detectors). These devices need not be connected to a signal system for this part to apply.

§ 246.9 Waivers.

(a) A person subject to a requirement of this part may petition FRA for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If FRA finds that a waiver of compliance is in the public interest and is consistent with railroad safety, FRA may grant the waiver subject to any conditions FRA deems necessary.

§ 246.11 Penalties and consequences for noncompliance.

(a) Any person, as defined in § 246.7, who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation. However, penalties may be assessed against individuals only for willful violations, and a penalty not to exceed the aggravated maximum civil monetary penalty per violation may be assessed, where:

(1) A grossly negligent violation, or a pattern of repeated violations, has created an imminent hazard of death or injury to persons, or

(2) A death or injury has occurred. *See* 49 CFR part 209, appendix A.

(b) Each day a violation continues constitutes a separate offense.

(c) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(d) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

(e) In addition to the enforcement methods referred to in paragraphs (a) through (d) of this section, FRA may address violations of this part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal rail safety laws.

(f) FRA's website at *https://railroads.dot.gov/* contains a schedule of civil penalty amounts used in connection with this part.

Subpart B—Program and Eligibility Requirements

§ 246.101 Certification program required.

(a) Each railroad subject to this part shall have a written signal employee certification program.

(b) Each certification program shall include all of the following:

(1) If applicable, an explanation and discussion of the occupational categories and subcategories of certified signal service that comply with the requirements in § 246.107;

(2) A procedure for evaluating prior safety conduct as a motor vehicle operator that complies with the criteria established in § 246.111;

(3) A procedure for evaluating prior safety conduct as an employee or certified signal employee with other railroads that complies with the criteria established in § 246.113;

(4) A procedure for evaluating potential substance abuse disorders and compliance with railroad alcohol and drug rules that complies with the criteria established in § 246.115;

(5) A procedure for evaluating visual and hearing acuity that complies with the criteria established in §§ 246.117 and 246.118;

(6) A procedure for training that complies with the criteria established in § 246.119;

(7) A procedure for qualifying persons on its signal system and signal-related technology that complies with the criteria established in § 246.120;

(8) A procedure for knowledge testing that complies with the criteria established in § 246.121;

(9) A procedure for monitoring operational performance that complies with the criteria established in § 246.123; and

(10) A procedure for mentoring uncertified signal employees that complies with the criteria established in § 246.124.

(c) Each certification program shall be version controlled. Any change from the previous FRA-approved version of the certification program must be tracked.

§ 246.103 FRA review of certification programs.

(a) *Certification program submission schedule for railroads with signal systems in operation.* With the exception of railroads exempted by § 246.3(a), each railroad with a signal system in operation as of July 22, 2024, shall submit its signal employee certification program to FRA, in accordance with the procedures and requirements contained in § 246.106, according to the following schedule:

(1) All Class I railroads (including the National Railroad Passenger Corporation) and railroads providing commuter service shall submit their programs to FRA no later than March 17, 2025.

(2) All Class II railroads and Class III railroads (including a switching, terminal, or other railroad not otherwise classified) shall submit their programs to FRA no later than November 12, 2025.

(b) *Certification program submission for new railroads.* Each railroad that commences operations after July 22, 2024 shall submit to FRA, and obtain FRA approval of, its written signal employee certification program, in accordance with the procedures and requirements contained in § 246.106, prior to installing, implementing, or operating a signal system subject to this part.

(c) *Method for submitting certification programs to FRA.*

(1) Railroads must submit their written certification programs and their requests for FRA approval (described in § 246.106(a)) by emailing the program and the request for FRA approval to *FRASIGNALCERTPROG@dot.gov.*

(2) A parent company may submit a written certification program on behalf of one or more subsidiary railroads in accordance with § 246.106(a).

(d) *Notification requirements.* Each railroad or parent company that submits a certification program to FRA must:

(1) Simultaneously with its submission, provide a copy of the program and the request for FRA approval to the president of each labor organization that represents the railroad's signal employees and to all of the railroad's signal employees who are subject to this part; and

(2) Include in its submission to FRA, a statement affirming that the railroad or parent company has provided a copy of the program and request for FRA approval to the president of each labor organization that represents the railroad's signal employees and to all of the railroad's signal employees who are subject to this part, along with a list of the names and email addresses of each president of a labor organization who was provided a copy of the program.

(e) *Comment period.* Any designated representative of signal employees subject to this part or any directly affected person who does not have a designated representative may comment on a railroad's or parent company's program provided that:

(1) The comment is submitted no later than 60 days after the date the program was submitted to FRA;

(2) The comment includes a concise statement of the commenter's interest in the matter;

(3) The commenter affirms that a copy of the comment was provided to the railroad or parent company; and

(4) The comment was emailed to *FRASIGNALCERTPROG@dot.gov.*

(f) *FRA review period.* Upon receipt of a complete certification program, FRA will commence a thorough review of the program to ensure that it satisfies all of the requirements under this part.

(1) If FRA determines that the program satisfies all of the requirements under this part, FRA will issue a letter notifying the railroad or parent company that its program has been approved. Such letter will typically be issued within 120 days of the date the program was submitted to FRA.

(2) If FRA determines that the program does not satisfy all of the requirements under this part, FRA will issue a letter notifying the railroad or parent company that its program has been disapproved. Such letter will typically be issued within 120 days of the date the program was submitted to FRA and will identify the deficiencies found in the program that must be corrected before the program can be approved. After addressing these deficiencies, railroads and parent companies can resubmit their programs in accordance with paragraph (h) of this section.

(3) If a railroad or parent company does not receive an approval or disapproval letter from FRA within 120 days of the date the program was submitted to FRA, FRA's decision on the program will remain pending until such time that FRA issues a letter either approving or disapproving the program. A certification program is not approved until FRA issues a letter approving the program.

(g) *Material modifications.* A railroad or parent company that intends to make one or more material modifications to its FRA-approved program must submit a request for approval (as described in § 246.106(a)(3)) of how it intends to modify the program and a copy of the modified program which indicates changes from the last approved version.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The description of the modification and the modified program must conform with the procedures and requirements contained in § 246.106.

(3) The process for submission and review of material modifications shall conform with paragraphs (c) through (f) of this section.

(4) A railroad or parent company shall not implement a material modification to its program until FRA issues its approval of the material modification in accordance with paragraph (f)(1) of this section.

(h) *Resubmissions.* If FRA disapproves a railroad or parent company's program or material modification, as described in paragraph (f)(2) of this section, the railroad or parent company may resubmit its program or material modification after addressing all of the deficiencies noted by FRA.

(1) The resubmission must conform with the procedures and requirements contained in § 246.106.

(2) The process for submission and review of resubmitted programs and resubmitted material modifications shall conform with paragraphs (c) through (f) of this section.

(3) The following deadlines apply to railroads and parent companies that have their programs or material modifications disapproved by FRA:

(i) For a railroad that submitted its program pursuant to paragraph (a) of this section or a parent company that submitted a program on behalf of one or more subsidiary railroads pursuant to the submission deadline in paragraph (a) of this section, the railroad or parent company must resubmit its program within 30 days of the date that FRA notified the railroad of the deficiencies in its program. If a railroad or parent company fails to resubmit its program within this timeframe and continues its rail operations, FRA may consider such

actions to be a failure to implement a program.

(ii) For a railroad that submitted its program pursuant to paragraph (b) of this section, there is no FRA-imposed deadline for resubmitting its program. However, pursuant to § 246.105(b), the railroad shall not install, implement, or operate signal systems subject to this part until its program has been approved by FRA.

(iii) For a railroad or parent company that submitted a material modification to its FRA-approved program, there is no FRA-imposed deadline for resubmitting the material modification. However, pursuant to paragraph (g)(4) of this section, the railroad or parent company cannot implement the material modification until it has been approved by FRA.

(i) *Rescinding prior approval of program.* FRA reserves the right to revisit its prior approval of a railroad or parent company's program at any time.

(1) If upon such review FRA discovers deficiencies in the program, FRA shall issue the railroad or parent company a letter rescinding its prior approval of the program and notifying the railroad or parent company of the deficiencies in its program that must be addressed.

(2) Within 30 days of FRA notifying the railroad or parent company of the deficiencies in its program, the railroad or parent company must address these deficiencies and resubmit its program to FRA. The resubmitted program must conform with the procedures and requirements contained in § 246.106.

(3) The process for submission and review of resubmitted programs under this paragraph (i) shall conform with paragraphs (c) through (f) of this section.

(4) If a railroad or parent company fails to resubmit its program to FRA within the timeframe prescribed in paragraph (i)(2) of this section and the railroad continues its rail operations, FRA may consider such actions to be a failure to implement a program.

(5) If FRA issues a letter disapproving the railroad or parent company's resubmitted program, the railroad or parent company shall resubmit its program in accordance with this paragraph (i).

(6) A program that has its approval rescinded under paragraph (i)(1) of this section may remain in effect until whichever of the following happens first:

(i) FRA approves the railroad or parent company's resubmitted program; or

(ii) FRA disapproves the railroad or parent company's second attempt at resubmitting its program.

(7) If FRA disapproves a railroad or parent company's second attempt at resubmitting its program under this paragraph and the railroad or parent company continues its rail operations, FRA may consider such actions to be a failure to implement a program.

(j) *Availability of Certification Program Documents.* The following documents will be available on FRA's website (*railroads.dot.gov*):

(1) A railroad or parent company's originally submitted program, a resubmission of its program, or a material modification of its program;

(2) Any comments, submitted in accordance with paragraph (e) of this section, to a railroad or parent company's originally submitted program, a resubmission of its program, or a material modification of its program; and

(3) Any approval or disapproval letter issued by FRA in response to a railroad or parent company's originally submitted program, a resubmission of its program, or a material modification of its program.

§ 246.105 Implementation schedule for certification programs.

(a) Each railroad that submits its signal employee certification program to FRA in accordance with § 246.103(a), may continue rail operations while it awaits approval of its program by FRA. However, if FRA disapproves a railroad's program on two occasions and the railroad continues rail operations, FRA may consider such actions to be a failure to implement a program.

(b) Each railroad that submits its signal employee certification program to FRA in accordance with § 246.103(b), must have its program approved by FRA prior to installing, implementing, or operating signal systems subject to this part. If a railroad installs, implements, or operates a signal system before its program is approved by FRA, FRA may consider such actions to be a failure to implement a program.

(c) By March 17, 2025, each railroad shall:

(1) In writing, designate as certified signal employees all persons authorized by the railroad to perform the duties of a certified signal employee as of March 17, 2025; and

(2) Issue a certificate that complies with § 246.207 to each person that it designates.

(d) Between March 17, 2025 and the date FRA approves the railroad's certification program, each railroad shall:

(1) In writing, designate as a certified signal employee any person who has been authorized by the railroad to perform the duties of a certified signal employee between March 17, 2025 and the date FRA approves the railroad's certification program; and

(2) Issue a certificate that complies with § 246.207 to each person that it designates.

(e) After March 17, 2025, no railroad shall permit or require a person to perform service as a certified signal employee unless that person is a certified signal employee.

(f) No railroad shall permit or require a person, designated as a certified signal employee under the provisions of paragraph (c) or (d) of this section, to perform service as a certified signal employee for more than three years after the date FRA approves the railroad's certification program unless that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.

(1) Except as provided in paragraph (f)(3) of this section, a person who has been designated as a certified signal employee under the provisions of paragraph (c) or (d) of this section and who is eligible to receive a retirement pension in accordance with the terms of an applicable agreement or in accordance with the terms of the Railroad Retirement Act (45 U.S.C. 231) within three years from the date the certifying railroad's program is approved, may request, in writing, that a railroad not recertify that person, pursuant to subpart B of this part, until three years from the date the certifying railroad's program is approved.

(2) Upon receipt of a written request pursuant to paragraph (f)(1) of this section, a railroad may wait to recertify the person making the request until the end of the three-year period after FRA has approved the railroad's certification program. If a railroad grants any request, it must grant the request of all eligible persons to every extent possible.

(3) A person who is subject to recertification under part 240 or 242 of this chapter may not make a request pursuant to paragraph (f)(1) of this section.

(g) After a railroad's certification program has been approved by FRA, the railroad shall only certify or recertify a person as a signal employee if that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.

§ 246.106 Requirements for certification programs.

(a) *Railroad and parent company certification program submission.* (1)(i) A railroad's certification program submission must include a copy of its

certification program and a request for FRA approval.

(ii) Any parent company that submits a single certification program for one or more subsidiary railroads shall provide a list of its railroads that will utilize the program.

(iii) If a parent company submits a certification program on behalf of one or more of its subsidiary railroads, the parent company shall assume responsibility for compliance with this part for all railroads identified on the list required by paragraph (a)(1)(ii) of this section.

(2) For a railroad or parent company's initial certification program submission, the request for FRA approval can be in letter or narrative format and shall include a statement that the railroad or parent company is seeking approval of its program from FRA.

(3) If a railroad or parent company is making a material modification to a program that has been previously approved by FRA, the request for FRA approval can be in letter or narrative format and shall include a copy of the modified certification program that identifies all proposed changes from the last FRA-approved version of the program.

(4) A railroad or parent company will receive approval or disapproval notices from FRA by email.

(5) FRA may electronically store any materials required by this part.

(b) *Organization of the certification program.* Each certification program must be organized to present the required information in paragraphs (b)(1) through (6) of this section. Each section of the certification program must begin with the name, title, telephone number, and email address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

(1) *Section One of the certification program: General information and elections.*

(i) The first section of the certification program must contain the name of the railroad or parent company submitting the program, the person to be contacted concerning the request for FRA approval (including the person's name, title, telephone number, and email address), and a statement electing either to accept responsibility for training persons not previously certified as signal employees (''initial signal employee training'') or to not accept this responsibility.

(ii) If a railroad or parent company elects to not provide initial signal employee training, the railroad or parent company shall make the determinations required by § 246.125. The railroad or parent company will be limited to certifying signal employees previously certified by another railroad. A railroad or parent company can change its election by obtaining FRA approval of a material modification to its program, in accordance with § 246.103(g).

(iii) If a railroad or parent company elects to accept responsibility for providing initial signal employee training to persons not previously certified as signal employees, the railroad or parent company must submit information explaining how such persons will be trained but is not required to perform such training. A railroad or parent company that elects to accept responsibility for providing initial signal employee training may authorize another railroad or non-railroad entity to perform the training. A railroad or parent company that authorizes another railroad or non-railroad entity to perform such training must provide the name of the training provider in its certification program but shall remain responsible for ensuring that the training provider adheres to the training program submitted in the railroad or parent company's certification program.

(iv) If a railroad or parent company elects to classify its certified signal employees into more than one occupational category or subcategory by class, task, location, or other suitable terminology, the railroad or parent company shall include the following in the first section of its certification program:

(A) An up-to-date list and description of each occupational category or subcategory of certified signal employee;

(B) A statement of the roles and responsibilities of each occupational category or subcategory of certified signal employee; and

(C) A detailed list of the safety-related tasks and subtasks performed by each occupational category or subcategory of certified signal employee.

(2) *Section Two of the certification program: Training previously certified signal employees.* The second section of the certification program must contain information about the railroad or parent company's program for training previously certified signal employees, including all of the following information:

(i) As provided for in § 246.119(i), each railroad must have a program for the ongoing education of its certified signal employees to ensure that they maintain the necessary knowledge concerning applicable Federal railroad safety laws, regulations, and orders; railroad signal system safety and operating rules; and applicable standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of signal systems and signal-related technology deployed on the railroad. The railroad or parent company must describe in this section of the program how it will ensure that its certified signal employees maintain the necessary knowledge and skills to safely discharge their responsibilities so as to comply with the standard set forth in § 246.119(i).

(ii) The railroad or parent company must provide sufficient detail in this section of its program to permit effective evaluation of its training program in terms of the subject matters covered, the frequency and duration of training sessions (including the interval between attendance at such training sessions), the training environment employed (for example, use of classroom, use of computer-based training, use of film or slide presentations, and use of on-the-job training), and which aspects of the training program will be voluntary or mandatory.

(iii) The railroad or parent company must explain how the training program will address a certified signal employee's loss of retained knowledge over time.

(iv) The railroad or parent company must explain how the training program will address changed circumstances over time, such as the introduction of new or modified signal system equipment and signal-related technology (including software modifications), to ensure qualification on the railroad's signal system and signal-related technology and compliance with the training standard set forth in § 246.119.

(v) The railroad or parent company must explain how qualification training will be provided, how long a certified signal employee can be absent from performing work on signal systems and signal-related technology before needing to be requalified (a time period that cannot exceed 12 months), and once that threshold is reached, how the signal employee will acquire the needed qualification.

(vi) The railroad or parent company must explain how it will administer training for previously certified signal employees who have had their certification expire. If a railroad or parent company's certification program fails to specify how it will administer training for these signal employees, then the railroad or parent company shall require them to successfully complete

the railroad or parent company's entire training program.

(3) *Section Three of the certification program: Testing and evaluating previously certified signal employees.* The third section of the certification program must contain information about the railroad or parent company's program for testing and evaluating previously certified signal employees, including all of the following information:

(i) The railroad or parent company must describe in this section how it will ensure that its previously certified signal employees demonstrate their knowledge concerning the safe discharge of their responsibilities, so as to comply with the standards set forth in § 246.121.

(ii) The railroad or parent company must describe in this section how it will have ongoing testing and evaluation to ensure that its previously certified signal employees have the necessary visual and hearing acuity as provided for in §§ 246.117 and 246.118. This section must also address how the railroad or parent company will ensure that its medical examiners have sufficient information concerning the railroad's operations, as well as the certified signal employee's safety-related tasks, to effectively form appropriate conclusions about the ability of a particular individual to safely perform as a certified signal employee.

(4) *Section Four of the certification program: Training, testing, and evaluating persons not previously certified.* Unless a railroad or parent company has elected to not provide initial signal employee certification training, the fourth section of the certification program must contain information about the railroad or parent company's program for educating, testing, and evaluating persons not previously certified as signal employees, including all of the following information:

(i) As provided for in § 246.119, a railroad or parent company that is issuing an initial signal employee certification to a person must have a program for the training, testing, and evaluation of its signal employee certification candidates to ensure that they acquire the necessary knowledge and skills. A railroad or parent company must describe in this section how it will ensure that its signal employee certification candidates acquire sufficient knowledge and skills and demonstrate their knowledge and skills concerning the safe discharge of their responsibilities. A railroad or parent company must also discuss its procedures for mentoring candidates for signal employee certification, in accordance with § 246.124;

(ii) This section of the certification program must contain the same level of detail about the initial signal employee training program and the testing and evaluation of previously uncertified signal employees as is required for previously certified signal employees in paragraphs (b)(2) and (3) of this section (Sections Two and Three of the certification program);

(iii) Railroads and parent companies that elect to rely on other entities to conduct signal employee certification training must explain how certification candidates will be provided with the required training on the signal systems and signal-related technology deployed on the railroad or parent company's territory.

(iv) This section of the certification program must explain how the railroad or parent company will administer the training of previously uncertified signal employees with extensive signal experience. If a railroad or parent company's certification program fails to specify how it will train these signal employees, then the railroad or parent company shall require them to successfully complete the railroad or parent company's entire training program.

(5) *Section Five of the certification program: Monitoring operational performance by certified signal employees.* The fifth section of the certification program must contain information about the railroad or parent company's program for monitoring the operational performance of its certified signal employees, including all of the following information:

(i) Section 246.123 requires that a railroad conduct ongoing monitoring of its certified signal employees and that each certified signal employee performing signal work that requires certification have an annual unannounced compliance test. A railroad or parent company must describe in this section of its certification program its ongoing program for monitoring that its certified signal employees demonstrate their skills concerning the safe discharge of their responsibilities.

(ii) A railroad or parent company must describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 246.123.

(6) *Section Six of the certification program: Procedures for routine administration of the signal employee certification program.* The final section of the certification program must contain a summary of how the railroad or parent company's program and procedures will implement various aspects of the regulatory provisions in this part that relate to the routine administration of its certification program for signal employees. Specifically, this section must address the procedural aspects of the following provisions and must describe the manner in which the railroad or parent company will implement its program so as to comply with all of the following provisions:

(i) Section 246.301, which provides that each railroad must have procedures for review and comment on adverse information.

(ii) Sections 246.111, 246.113, 246.115, and 246.303, which require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as a railroad worker.

(iii) Sections 246.109, 246.201, and 246.301, which place a duty on the railroad to make a series of determinations. When describing how it will implement its certification program to comply with those sections, a railroad or parent company must describe: the procedures it will utilize to ensure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that a person will or will not be certified; and how the railroad or parent company will communicate adverse decisions.

(iv) Sections 246.109, 246.117, 246.118, 246.119, and 246.121, which place a duty on the railroad to make a series of determinations. When describing how it will implement its program to comply with these sections, a railroad or parent company must describe how it will document the factual basis the railroad or parent company relied on in making determinations under these sections.

(v) Section 246.124, which require each railroad to have procedures for mentoring signal employees who have not been certified.

(vi) Section 246.125, which permits reliance on signal employee certification determinations made by other railroads.

(vii) Sections 246.207 and 246.307, which contain the requirements for replacing lost certificates and the conduct of certification revocation proceedings.

§ 246.107 Signal service classifications.

(a) A railroad may classify its certified signal employees in occupational categories or subcategories by class, task, location, or other suitable

terminology, in accordance with an FRA-approved certification program that complies with the requirements of this part.

(b) Any person called to work on a signal system or signal-related technology on which they have not been certified shall immediately notify the railroad or their employer that they are not certified to work on the signal system or signal-related technology.

(c) After FRA has approved a railroad's certification program pursuant to this part, no railroad shall permit a person to work on a signal system or signal-related technology on which the person has not been certified and qualified, unless the person works under the direct and immediate supervision of a mentor or qualified instructor in accordance with § 246.124.

§ 246.109 Determinations required for certification and recertification.

(a) After FRA has approved a railroad's signal employee certification program, the railroad, prior to initially certifying or recertifying any person as a signal employee, shall, in accordance with its FRA-approved program, determine in writing that:

(1) The individual meets the prior safety conduct eligibility requirements of §§ 246.111 and 246.113;

(2) The individual meets the eligibility requirements of §§ 246.115 and 246.303;

(3) The individual meets the visual and hearing acuity standards of §§ 246.117 and 246.118;

(4) If applicable, the individual has completed a training program that meets the requirements of § 246.119;

(5) The individual meets the qualification requirements of § 246.120; and

(6) The individual has the necessary knowledge, as demonstrated by successfully completing testing and practical demonstration that meet the requirements of § 246.121.

(b) Nothing in this section, § 246.111, or § 246.113 shall be construed to prevent persons subject to this part from entering into an agreement that results in a railroad obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 246.111 or § 246.113.

§ 246.111 Prior safety conduct as motor vehicle operator.

(a) Except as provided in paragraphs (b) through (e) of this section, after FRA has approved a railroad's signal employee certification program, the railroad, prior to certifying or recertifying any person as a signal employee, shall determine that the person meets the eligibility requirements of this section involving prior conduct as a motor vehicle operator.

(b) A railroad shall certify a person as a signal employee for 60 days if the person:

(1) Requested the information required by paragraph (g) of this section at least 60 days prior to the date of the decision to certify that person; and

(2) Otherwise meets the eligibility requirements provided in § 246.109(a)(1) through (6).

(c) A railroad shall recertify a person as a signal employee for 60 days from the expiration date of that person's certification if the person:

(1) Requested the information required by paragraph (g) of this section at least 60 days prior to the date of the decision to recertify that person; and

(2) Otherwise meets the eligibility requirements provided in § 246.109(a)(1) through (6).

(d) Except as provided in paragraph (e) of this section, if a railroad who certified or recertified a person for 60 days pursuant to paragraph (b) or (c) of this section does not obtain and evaluate the information requested pursuant to paragraph (g) of this section within those 60 days, that person will be ineligible to perform as a certified signal employee until the information can be evaluated by the railroad.

(e) If a person requests the information required pursuant to paragraph (g) of this section but is unable to obtain it, that person or the railroad certifying or recertifying that person may petition for a waiver of the requirements of paragraph (a) of this section in accordance with the provisions of part 211 of this chapter. A railroad shall certify or recertify a person during the pendency of the waiver request if the person otherwise meets the eligibility requirements provided in § 246.109(a)(1) through (6).

(f) Except for persons designated as signal employees under § 246.105(c) or (d) or for persons covered by paragraph (j) of this section, each person seeking certification or recertification under this part shall, no more than one year prior to the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (g) through (i) of this section to make information concerning their driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State, Federal, or foreign law to make information concerning their driving record available to that railroad.

(g) Each person seeking certification or recertification under this part shall request, in writing, that the chief of each driver licensing agency identified in paragraph (h) of this section provide a copy of that agency's available information concerning their driving record to the railroad that is considering such certification or recertification.

(h) Each person shall request the information required under paragraph (g) of this section from:

(1) The chief of the driver licensing agency of any jurisdiction, including a State or foreign country, which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other jurisdiction, including states or foreign countries, where the person held a driver's license within the preceding three years.

(i) If advised by the railroad that a driver licensing agency has informed the railroad that additional information concerning that person's driving history may exist in the files of a State agency or foreign country not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the driver licensing agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

(2) Take any additional action required by State, Federal, or foreign law to obtain that additional information.

(j) Any person who has never obtained a motor vehicle driver's license is not required to comply with the provisions of paragraph (g) of this section but shall notify the railroad of that fact in accordance with procedures established by the railroad in its certification program.

(k) Each certified signal employee or person seeking certification as a signal employee shall report motor vehicle incidents described in paragraphs (m)(1) and (2) of this section to the certifying railroad within 48 hours of being convicted for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such violations. For purposes of this paragraph (k) and paragraph (m) of this section, ''State action'' means action of the jurisdiction that has issued the motor vehicle driver's license, including a foreign country. For purposes of signal employee certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license.

(l) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred:

(1) Prior to July 22, 2024; or

(2) More than three years before the date of the railroad's certification decision; or

(3) At a time other than that specifically provided for in § 246.111, § 246.113, § 246.115, or § 246.303.

(m) When evaluating a person's motor vehicle driving record, a railroad shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(2) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for refusal to undergo such testing as is required by State or foreign law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(n) If such an incident, described in paragraph (m) of this section, is identified:

(1) The railroad shall provide the data to the railroad's Drug and Alcohol Counselor (DAC), together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder.

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the DAC in the context of such evaluation.

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the DAC, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the DAC consistent with the technical standards specified in 49 CFR part 219, subpart H, as well as 49 CFR part 40.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the provisions of § 246.115(c) will apply.

(5) If the person fails to comply with the requirements of paragraph (n)(2) of this section, the person shall be ineligible to perform as a certified signal employee until such time as the person complies with the requirements.

(o) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.113 Prior safety conduct with other railroads.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the certification candidate meets the eligibility requirements of this section.

(b) If the certification candidate has not been employed or certified by any other railroad in the previous five years, they do not have to submit a request in accordance with paragraph (c) of this section, but they must notify the railroad of this fact in accordance with procedures established by the railroad in its certification program.

(c) Except as provided for in paragraph (b) of this section, each person seeking certification or recertification under this part shall submit a written request to each railroad that employed or certified the person within the previous five years to provide the following information to the railroad that is considering whether to certify or recertify that person as a signal employee:

(1) Information about that person's compliance with § 246.111 within the three years preceding the date of the request;

(2) Information about that person's compliance with § 246.115 within the five years preceding the date of the request; and

(3) Information about that person's compliance with § 246.303 within the five years preceding the date of the request.

(d) Each person submitting a written request required by paragraph (c) of this section shall:

(1) Submit the request no more than one year before the date of the railroad's decision on certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning their service record available to the railroad.

(e) Within 30 days after receipt of a written request that complies with paragraph (c) of this section, a railroad shall provide the information requested to the railroad designated in the written request.

(f) If a railroad is unable to provide the information requested within 30 days after receipt of a written request that complies with paragraph (c) of this section, the railroad shall provide an explanation, in writing, of why it cannot provide the information within the requested time frame. If the railroad will ultimately be able to provide the requested information, the explanation shall state approximately how much more time the railroad needs to supply the requested information. If the railroad will not be able to provide the requested information, the railroad shall provide an adequate explanation for why it cannot provide this information. Copies of this explanation shall be provided to the railroad designated in the written request and to the person who submitted the written request for information.

(g) When evaluating a person's prior safety conduct with a different railroad, a railroad shall not consider information concerning prior safety conduct that occurred:

(1) Prior to July 22, 2024; or

(2) At a time other than that specifically provided for in § 246.111, § 246.113, § 246.115, or § 246.303.

(h) Each railroad shall adopt and comply with a program that complies with the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program that complies with the requirements of this subject, that person shall be considered to have violated the requirements of this section.

§ 246.115 Substance abuse disorders and alcohol drug rules compliance.

(a) *Eligibility determination.* After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the person meets the eligibility requirements of this section.

(b) *Documentation.* In order to make the determination required under paragraph (c) of this section, a railroad

shall have on file documents pertinent to that determination, including a written document from its DAC which states their professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder.

(c) *Fitness requirement.* (1) A person who has an active substance abuse disorder shall be denied certification or recertification as a signal employee.

(2) Except as provided in paragraph (e) of this section, a certified signal employee who is determined to have an active substance abuse disorder shall be ineligible to hold certification. Consistent with other provisions of this part, certification may be reinstated as provided in paragraph (e) of this section.

(3) In the case of a current employee of a railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 246.111), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.1001(b)(1) of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to ineligibility for certification.

(d) *Prior alcohol/drug conduct; Federal rule compliance.* (1) In determining whether a person may be or remain certified as a signal employee, a railroad shall consider conduct described in paragraph (d)(2) of this section that occurred within a period of five consecutive years prior to the review. A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph (d).

(2) A railroad shall consider any violation of § 219.101 or § 219.102 of this chapter and any refusal to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative.

(3) A period of ineligibility described in this section shall begin:

(i) For a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(ii) For a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been suspended.

(4) The period of ineligibility described in this section shall be determined in accordance with the following standards:

(i) In the case of one violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (e) of this section. In the case of two violations of § 219.102 of this chapter, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of nine months (unless identification of the violation was through a qualifying referral program described in § 219.1001 of this chapter and the signal employee waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in paragraph (e) of this section). In the case of two or more violations of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of five years.

(iv) If a person refuses to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative, the person shall be ineligible to hold a certificate for a period of nine months.

(e) *Future eligibility to hold certificate following alcohol/drug violation.* The following requirements apply to a person who has been denied certification or who has had their certification suspended or revoked as a result of conduct described in paragraph (d) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has:

(i) Been evaluated by a Substance Abuse Professional (SAP) to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the SAP prior to return to service; and

(iii) In accordance with the testing procedures of 49 CFR part 219, subpart H, has had a return-to-duty alcohol test with an alcohol concentration of less than .02 and a return-to-duty body fluid sample that tested negative for controlled substances.

(2) A certified signal employee placed in service or returned to service under the conditions described in paragraph (e)(1) of this section shall continue in any program of counseling or treatment deemed necessary by the SAP and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than five years following return to service. Follow-up tests shall include not fewer than six alcohol tests and six drug tests during the first year following return to service.

(3) Return-to-duty and follow-up alcohol and drug tests shall be performed consistent with the requirements of 49 CFR part 219, subpart H.

(4) This paragraph (e) does not create an entitlement to utilize the services of a railroad SAP, to be afforded leave from employment for counseling or treatment, or to employment as a signal employee. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(f) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.1003(f) of this chapter to treat qualified referrals for substance abuse counseling and treatment as confidential; and the certification status of a signal employee who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its referral policy a provision that, at least with respect to a certified signal employee or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP or DAC official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

(g) *Complying with certification program.* Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.117 Visual acuity.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the person meets the standards for visual acuity prescribed in this section and appendix B to this part.

(b) Any examination required under this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant.

(c) Except as provided in paragraph (d) of this section, each certified signal employee shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing, either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses; or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix B to this part.

(d) A person not meeting the thresholds in paragraph (c) of this section shall, upon request of the certification candidate, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely perform as a certified signal employee. In such cases, the following procedures will apply:

(1) In accordance with the guidance prescribed in appendix B to this part, a person is entitled to:

(i) One retest without making any showing; and

(ii) An additional retest if the person provides evidence that circumstances have changed since the last test to the extent that the person may now be able to safely perform as a certified signal employee.

(2) The railroad shall provide its medical examiner with a copy of this part, including all appendices.

(3) If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraph (c) of this section, the person has the ability to safely perform as a certified signal employee, the railroad may conclude that the person satisfies the visual acuity requirements of this section to be a certified signal employee. Such certification will be conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(e) To make the determination required under paragraph (a) of this section, a railroad shall have on file the following for each certification candidate:

(1) A medical examiner's certificate that the candidate has been medically examined and either does or does not meet the visual acuity standards prescribed in paragraph (c) of this section.

(2) If necessary under paragraph (d) of this section, a medical examiner's written professional opinion which states the basis for their determination that:

(i) The candidate can be certified, under certain conditions if necessary, even though the candidate does not meet the visual acuity standards prescribed in paragraph (c) of this section; or

(ii) The candidate's visual acuity prevents the candidate from being able to safely perform as a certified signal employee.

(f) If the examination required under this section shows that the person needs corrective lenses to meet the standards for visual acuity prescribed in this section and appendix B to this part, that person shall use corrective lenses at all times while performing as a certified signal employee unless the railroad's medical examiner subsequently determines in writing that the person can safely perform as a certified signal employee without corrective lenses.

(g) When a certified signal employee becomes aware that their vision has deteriorated, they shall notify the railroad's medical department or other appropriate railroad official of the deterioration. Such notification must occur prior to performing any subsequent service as a certified signal employee. The individual cannot return to service as a certified signal employee until they are reexamined and determined by the railroad's medical examiner to satisfy the visual acuity standards prescribed in this section and appendix B to this part.

(h) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.118 Hearing acuity.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the person meets the standards for hearing acuity prescribed in this section and appendix B to this part.

(b) Any examination required under this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant.

(c) Except as provided in paragraph (d) of this section, each certified signal employee shall have hearing acuity that meets or exceeds the following thresholds with or without use of a hearing aid: The person does not have an average hearing loss in the better ear greater than 40 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz. The hearing test or audiogram used to show a person's hearing acuity shall meet the requirements of one of the following:

(1) As required in 29 CFR 1910.95(h) (Occupational Safety and Health Administration);

(2) As required in § 227.111 of this chapter; or

(3) Conducted using an audiometer that meets the specifications of, and is maintained and used in accordance with, a formal industry standard such as American National Standards Institute (ANSI) S3.6, ''Specifications for Audiometers.''

(d) A person not meeting the thresholds in paragraph (c) of this section shall, upon request of the certification candidate, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely perform as a certified signal employee. In such cases, the following procedures will apply:

(1) In accordance with the guidance prescribed in appendix B to this part, a person is entitled to:

(i) One retest without making any showing; and

(ii) An additional retest if the person provides evidence that circumstances have changed since the last test to the extent that the person may now be able to safely perform as a certified signal employee.

(2) The railroad shall provide its medical examiner with a copy of this part, including all appendices.

(3) If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraph (c) of this section, the person has the ability to safely perform as a certified signal employee, the railroad may conclude that the person satisfies the hearing acuity requirements of this section to be a certified signal employee. Such certification will be conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(e) To make the determination required under paragraph (a) of this section, a railroad shall have on file the following for each certification candidate:

(1) A medical examiner's certificate that the candidate has been medically examined and either does or does not meet the hearing acuity standards prescribed in paragraph (c) of this section.

(2) If necessary under paragraph (d) of this section, a medical examiner's written professional opinion which states the basis for their determination that:

(i) The candidate can be certified, under certain conditions if necessary, even though the candidate does not meet the hearing acuity standards prescribed in paragraph (c) of this section; or

(ii) The candidate's hearing acuity prevents the candidate from being able to safely perform as a certified signal employee.

(f) If the examination required under this section shows that the person needs a hearing aid to meet the standards for hearing acuity prescribed in this section and appendix B to this part, that person shall use a hearing aid at all times while performing as a certified signal employee unless the railroad's medical examiner subsequently determines in writing that the person can safely perform as a certified signal employee without a hearing aid.

(g) When a certified signal employee becomes aware that their hearing has deteriorated, they shall notify the railroad's medical department or other appropriate railroad official of the deterioration. Such notification must occur prior to performing any subsequent service as a certified signal employee. The person cannot return to service as a certified signal employee until they are reexamined and determined by the railroad's medical examiner to satisfy the hearing acuity standards prescribed in this section and appendix B to this part.

(h) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.119 Training requirements.

(a) After FRA has approved a railroad or parent company's certification program, the railroad or parent company shall determine, prior to issuing any person a signal employee certificate, that the person has successfully completed training, in accordance with the requirements of this section.

(b) A railroad or parent company that elects to accept responsibility to provide initial signal employee training to persons who have not been previously certified as signal employees shall state in its certification program whether it will conduct the training or authorize another railroad or non-railroad entity to provide the training.

(c) A railroad or parent company that elects to accept responsibility to provide initial signal employee training to persons not previously certified as signal employees shall submit a training program which, at a minimum, includes the following:

(1) An explanation of how training will be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, practical demonstration, on-the-job training, or other formal training. The curriculum shall be designed to impart knowledge of, and ability to comply with, applicable Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders. The training shall document a person's knowledge of, and ability to comply with, Federal railroad safety laws, regulations, and orders, as well as railroad rules and procedures.

(2) An on-the-job training component which shall include the following:

(i) A syllabus describing content, required tasks, and related steps the person learning the job shall be able to perform within a specified timeframe. If the railroad or parent company has elected to classify its certified signal employees into more than one occupational category or subcategory, this syllabus shall include all safety-related tasks and subtasks performed by each category or subcategory of certified signal employee;

(ii) A statement of the conditions (*e.g.,* prerequisites, tools, equipment, documentation, briefings, demonstrations, and practice) necessary for learning transfer; and

(iii) A statement of the standards by which proficiency is measured through a combination of task/step accuracy, completeness, and repetition.

(3) A description of the processes to review and modify its training program when new safety-related railroad laws, regulations, orders, procedures, software, or new signal system equipment or signal-related technology are introduced into the workplace, including how it is determined if additional or refresher training is needed.

(d) Prior to beginning the on-the-job exercises discussed in paragraph (c)(2) of this section, each railroad or parent company shall make any relevant information or materials, such as signal standards, test procedures, operating rules, safety rules, or other rules, available for referencing by certification candidates.

(e) Prior to a person not previously certified as a signal employee being certified as a signal employee, a railroad or parent company shall require the person to:

(1) Successfully complete the initial signal employee training program developed pursuant to paragraph (c) of this section and any associated examinations covering the skills and knowledge the person will need to perform the tasks necessary to be a certified signal employee;

(2)(i) Successfully complete on-the-job training and demonstrate on-the-job proficiency by successfully completing the tasks and using the signal system equipment and signal-related technology necessary to be a certified signal employee on the certifying railroad. A certification candidate may only perform such tasks under the direct and immediate supervision of a mentor, signal instructor, or qualified instructor. A qualified instructor must confirm that on-the-job proficiency has been demonstrated.

(ii) If the railroad elects to classify its certified signal employees into more than one occupational category or subcategory, the person must demonstrate on-the-job proficiency by successfully completing the tasks applicable to that occupational category or subcategory in which the person is seeking to be certified. A qualified

instructor must confirm that on-the-job proficiency has been demonstrated; and

(3) Demonstrate qualification on the signal system equipment and signal-related technology deployed on the railroad's territory on which the person is expected to work. A qualified instructor must confirm that qualification has been demonstrated.

(f) In making the determination required under paragraph (a) of this section, a railroad shall have written documentation showing that:

(1) The person completed an initial signal employee training program that complies with paragraph (c) of this section (if the person has not been previously certified as a signal employee); and

(2) The person demonstrated their knowledge and on-the-job proficiency by achieving a passing grade under the testing and evaluation procedures of the training program; and

(3) The person achieved a passing score on the qualification exam on the signal system equipment and signal-related technology on which the person will work as a certified signal employee.

(g) The certification program, required under this part and submitted in accordance with the procedures and requirements described in § 246.106, shall include:

(1) How comprehensive training will be provided on the installation, operation, testing, maintenance, and repair of the signal systems and signal-related technology deployed on the railroad's territory; and

(2) How the railroad will ensure that each certified signal employee is qualified on the signal system equipment and signal-related technology (whether existing or new) deployed on the railroad's territory before the certified signal employee is required to install, operate, test, maintain, or repair that signal system equipment or signal-related technology; and

(3) The maximum time period that a certified signal employee can be absent from performing work on signal system equipment or signal-related technology that requires certification pursuant to this part before requalification will be required. In accordance with § 246.120(c), this time period cannot exceed 12 months.

(h) If ownership of a railroad is being transferred from one company to another, the signal employees of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation.

(i) A railroad shall provide for the continuing education of its certified signal employees to ensure that each certified signal employee maintains the necessary knowledge concerning:

(1) Railroad safety and operating rules;

(2) Compliance with all applicable Federal railroad safety laws, regulations, and orders; and

(3) Compliance with all applicable standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of new and existing signal systems and new and existing signal-related technology deployed on the railroad.

(j) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.120 Requirements for qualification.

(a) After FRA has approved a railroad's certification program, a railroad shall not permit or require a person to serve as a signal employee, as defined in § 246.7, unless that railroad determines that:

(1) The person is a certified signal employee; and

(2) The person either:

(i) Is qualified, as defined in § 246.7, on the signal system equipment and signal-related technology (whether existing or new) and therefore may reasonably be expected to be proficient on all safety related tasks the person is assigned to perform; or

(ii) Is working under the direct and immediate supervision of a mentor or qualified instructor.

(b) If a person is called to perform work on signal system equipment or signal-related technology that they are not qualified on, the person must immediately notify the railroad that they are not qualified on the signal system equipment or signal-related technology.

(c) A person shall no longer be considered qualified on signal system equipment or signal-related technology if they have not performed work that requires certification pursuant to this part on signal system equipment or signal-related technology in the previous 12 months.

(d) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.121 Knowledge testing.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate and in accordance with the requirements of this section, that the person has demonstrated sufficient knowledge of the railroad's signal standards, test procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal system equipment and signal-related technology.

(b) To make the knowledge determination required by paragraph (a) of this section, a railroad shall have procedures for testing a person being evaluated for certification as a signal employee that:

(1) Are designed to examine a person's knowledge of:

(i) All applicable Federal railroad safety laws, regulations, and orders governing signal systems and signal-related technology;

(ii) All applicable railroad safety and operating rules; and

(iii) All applicable railroad standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal systems and signal-related technology, including:

(A) The railroad's rules and standards for disabling and removing signal systems from service; and

(B) The railroad's rules and standards for placing signal systems back in service;

(2) Are objective in nature;

(3) Include a practical demonstration component;

(4) Are in written or electronic form;

(5) Are sufficient to accurately measure the person's knowledge of the subjects listed in paragraph (b)(1) of this section; and

(6) Allow for testing conducted with reference to books and other written

materials, as addressed in the railroad's certification program.

(c) The railroad shall provide the certification candidate with an opportunity to consult with a mentor, signal instructor or qualified instructor to explain one or more test questions.

(d) If a person fails the test, no railroad shall permit or require that person to work as a certified signal employee prior to that person's achieving a passing score during a reexamination of the test.

(e) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.123 Monitoring operational performance.

(a) Each railroad's certification program shall describe how it will monitor the operational performance of its certified signal employees by including procedures for:

(1) Giving each certified signal employee at least one unannounced compliance test each calendar year in one of the following areas: the railroad's signal system standards and test procedures, or Federal regulations concerning signal systems, except as provided for in paragraph (d) of this section;

(2) Giving unannounced compliance tests to certified signal employees who return to signal work that requires certification pursuant to this part, as described in paragraph (d) of this section;

(3) What actions the railroad will take if it finds deficiencies in a certified signal employee's performance during an unannounced compliance test; and

(4) Monitoring the performance of signal-related tasks.

(b) An unannounced compliance test shall:

(1) Be performed by a certified signal employee; and

(2) Be given to each certified signal employee at least once each calendar year, except as provided for in paragraph (d) of this section.

(c) If the railroad's certification program classifies signal employees pursuant to § 246.107, the unannounced compliance test shall be within scope of the certified signal employee's classification.

(d) A certified signal employee who is not performing signal work that requires certification pursuant to this part does not need to be given an unannounced compliance test. However, when the certified signal employee returns to signal work that requires certification pursuant to this part, the railroad shall:

(1) Give the certified signal employee an unannounced compliance test within 30 days of their return to signal work that requires certification; and

(2) Retain a written record that includes the following information:

(i) The date the certified signal employee stopped performing work that required certification pursuant to this part;

(ii) The date the certified signal employee returned to signal work that required certification pursuant to this part; and

(iii) The date and the result of the unannounced compliance test was performed following the signal employee's return to signal work requiring certification.

(e) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.124 Mentoring.

(a) Each railroad's certification program shall include procedures for the mentoring of persons who have not been certified by the railroad. Each railroad shall identify potential scenarios in which mentoring of non-certified persons will be provided.

(b) After FRA has approved a railroad's certification program pursuant to this part, the railroad shall not permit or require any person to perform work on a signal system or signal-related technology on its territory that requires certification unless the railroad first determines that:

(1) The person is a certified signal employee who has been certified by the railroad and qualified on all applicable signal system equipment and signal-related technology deployed on the railroad; or

(2) The person is working under the direct and immediate supervision of a mentor or qualified instructor.

(c) If the railroad elects to classify its certified signal employees into more than one occupational category or subcategory pursuant to § 246.107:

(1) The railroad shall address in its certification program how mentoring will be provided for certified signal employees who move into a different occupational category or subcategory of certified signal service; and

(2) Mentors shall be certified within the occupational category or subcategory of the task being performed by the person or persons working under their direct and immediate supervision.

(d) If allowed by the railroad's certification program, any work on a signal system performed by a person whose signal employee certification has been revoked shall be performed under the direct and immediate supervision of a mentor or qualified instructor.

(e) Each railroad's certification program shall address how mentoring will be provided to ensure that mentors are located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring. Each railroad's certification program shall also address how mentors will be held accountable for the work performed by persons working under the mentor's direct and immediate supervision. Any records of tests performed by persons working under the direct and immediate supervision of a mentor shall reflect the mentor's name.

(f) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.125 Certification determinations made by other railroads.

(a) A railroad or parent company that is considering certification of a person as a signal employee (''certifying railroad or parent company'') may rely on certain determinations made by another railroad or parent company concerning that person's certification.

(b) A certifying railroad or parent company that relies on the certification determinations made by another railroad shall be responsible for making the following determinations:

(1) The person's signal employee certification is still valid under §§ 246.201 and 246.307;

(2) The person has been qualified on the signal system equipment and signal-related technology deployed on the railroad territory on which the person is expected to work in accordance with § 246.119; and

(3) The person has demonstrated the necessary knowledge concerning the certifying railroad or parent company's signal standards, test procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the certifying railroad or parent company's signal system equipment and signal-related technology in accordance with § 246.121.

Subpart C—Administration of the Certification Program

§ 246.201 Time limitations for certification.

(a) After FRA approves a railroad's signal employee certification program, that railroad shall not certify or recertify a person as a signal employee if the railroad is making:

(1) A determination concerning eligibility under §§ 246.111, 246.113, 246.115, and 246.303 and the eligibility data being relied on was furnished more than one year before the date of the railroad's certification decision;

(2) A determination concerning vision or hearing acuity and the medical examination being relied on was conducted more than 450 days before the date of the railroad's certification decision; or

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than one year before the date of the railroad's certification decision, or more than two years before the date of the railroad's certification decision if the railroad administers knowledge testing pursuant to § 246.121 at intervals that do not exceed two years.

(b) The time limitations of paragraph (a) of this section do not apply to a railroad that is making a certification decision in reliance on determinations made by another railroad in accordance with § 246.125.

(c) Except if a person is designated as a certified signal employee under § 246.105(c) or (d), no railroad shall certify a person as a signal employee for an interval of more than three years.

(d) Each railroad shall issue each certified signal employee a certificate that complies with § 246.207 no later than 30 days from the date of its decision to certify or recertify that person.

§ 246.203 Retaining information supporting determinations.

(a) After FRA approves a railroad's signal employee certification program, any time the railroad issues, denies, or revokes a certificate after making the determinations required under § 246.109, it shall maintain a record for each certified signal employee and certification candidate. Each record shall contain the information, described in paragraph (b) of this section, that the railroad relied on in making the determinations required under § 246.109.

(b) A railroad shall retain the following information:

(1) Relevant data from the railroad's records concerning the person's prior safety conduct and eligibility;

(2) Relevant data furnished by another railroad;

(3) Relevant data furnished by a governmental agency concerning the person's motor vehicle driving record;

(4) Relevant data furnished by the person seeking certification concerning their eligibility;

(5) The relevant test results data concerning visual and hearing acuity;

(6) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's visual or hearing acuity;

(7) Relevant data from the railroad's records concerning the person's success or failure on knowledge test(s) under § 246.121;

(8) A sample copy of the written knowledge test or tests administered; and

(9) The relevant data from the railroad's records concerning the person's success or failure on unannounced tests the railroad performed to monitor the person's performance in accordance with § 246.123.

(c) If a railroad is relying on successful completion of a training program conducted by another entity, the relying railroad shall maintain a record for each certification candidate that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge relied on by the railroad in making its determinations.

(d) If a railroad is relying on a certification decision initially made by another railroad, the relying railroad shall maintain a record for each certification candidate that contains the relevant data furnished by the other railroad which it relied on in making its determinations.

(e) All records required under this section shall be retained by the railroad for a period of six years from the date of the certification, recertification, denial, or revocation decision and shall, upon request, be made available to FRA representatives in a timely manner.

(f) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or

(2) Otherwise falsify such records through material misstatement, omission, or mutilation.

(g) Nothing in this section precludes a railroad from maintaining the information required to be retained under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or individual records;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record;

(3) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to a record uniquely identifies the person making the amendment; and

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information which can be easily produced in an electronic or printed format that can be:

(i) Provided to FRA representatives in a timely manner; and

(ii) Authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by an FRA representative.

§ 246.205 List of certified signal employees and recordkeeping.

(a) After a railroad's certification program has received its initial approval from FRA, pursuant to § 246.103(f)(1), the railroad must maintain a list of each person who is currently certified as a signal employee by the railroad. The list must include the date of the railroad's certification decision and the date the person's signal employee certification expires. If a railroad classifies its certified signal employees into occupational categories or subcategories by class, task, location, or other suitable terminology, the list must indicate the occupational categories and subcategories in which each certified signal employee is certified to perform service.

(b) The list shall:

(1) Be updated at least annually;

(2) Be made available, upon request, to FRA representatives in a timely manner; and

(3) Be available either:

(i) In electronic format pursuant to paragraph (c) of this section; or

(ii) At the divisional or regional headquarters of the railroad.

(c) If a railroad elects to maintain its list in an electronic format, it must:

(1) Maintain an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or the list;

(2) Have its program and data storage system protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) An entry on the list cannot be deleted or altered by any individual after the entry is certified by the employee who created the entry;

(3) Have any amendment to the list either:

(i) Electronically stored apart from the entry on the list that it amends; or

(ii) Electronically attached to the entry on the list as information without changing the original entry;

(4) Ensure that each amendment to the list uniquely identifies the person making the amendment;

(5) Ensure that the system employed for data storage permits reasonable access and retrieval of the information which can be easily produced in an electronic or printed format that can be:

(i) Provided to FRA representatives within a timely manner; and

(ii) Authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by an FRA representative.

(d) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the list required by this section; or

(2) Otherwise falsify such list through material misstatement, omission, or mutilation.

§ 246.207 Certificate requirements.

(a) Each person who becomes a certified signal employee in accordance with this part shall be issued a paper or electronic certificate that:

(1)(i) Identifies the railroad issuing the certificate; or

(ii) Identifies the parent company issuing the certificate, if a parent company submits a certification program for one or more of its subsidiary railroads. The certificate issued by the parent company shall also list each subsidiary railroad on which the person is certified to work as a signal employee;

(2) Indicates it is a signal employee certificate and, if applicable, lists all signal employee occupational categories or subcategories developed pursuant to § 246.107 in which the person is certified;

(3) Provides the following information about the certified signal employee:

(i) Name;

(ii) Employee identification number; and

(iii) Either a physical description or photograph of the person;

(4) Identifies any conditions or limitations, including conditions to ameliorate vision or hearing acuity deficiencies, that restrict, limit, or alter the person's abilities to work as a certified signal employee;

(5) Shows the effective date of the certification;

(6) Shows the expiration date of the certification unless the certificate was issued pursuant to § 246.105(c) or (d);

(7) Has been signed by an individual designated in accordance with paragraph (b) of this section; and

(8) Is electronic or of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Each railroad or parent company shall designate in writing any person it authorizes to sign the certificates described in this section. The designation shall identify such persons by name or job title.

(c) Nothing in this section shall prohibit any railroad or parent company from including additional information on the certificate or supplementing the certificate through other documents.

(d) It shall be unlawful for any railroad or parent company to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on a certificate; or

(2) Otherwise falsify a certificate through material misstatement, omission, or mutilation.

(e) Except as provided for in paragraph (g) of this section, each certified signal employee shall:

(1) Have their certificate in their possession while on duty as a signal employee; and

(2) Display their certificate upon request from:

(i) An FRA representative;

(ii) A state inspector authorized under part 212 of this chapter;

(iii) An officer of the issuing railroad; or

(iv) An officer of the person's employer if the certified signal employee is not employed by the issuing railroad.

(f) If a person's signal employee certificate is lost, stolen, mutilated, or becomes unreadable, the railroad shall promptly replace the certificate at no cost to the person.

(g) A certified signal employee is exempt from the requirements of paragraph (e) of this section if:

(1) The railroad made its certification or recertification decision within the last 30 days and the person has not yet received their certificate; or

(2) The person's signal employee certificate was lost, stolen, mutilated, or became unreadable, and the railroad has not yet issued a replacement certificate to the person who reported their lost certificate.

(h) Any person who is notified or called to work as a certified signal employee and such work would cause the person to exceed certificate limitations, set forth in accordance with subpart B of this part, shall immediately notify the railroad that they are not authorized to perform that work and it shall be unlawful for the railroad to require such work.

(i) Nothing in this section shall be deemed to alter a certified signal employee's duty to comply with other provisions of this chapter concerning railroad safety.

§ 246.213 Multiple certifications.

(a) A person who holds a signal employee certificate may:

(1) Hold a signal employee certificate for multiple types of signal service; and

(2) Be certified in other crafts, such as a locomotive engineer or conductor.

(b) A railroad that issues multiple certificates to a person, shall, to the

extent possible, coordinate the expiration date of those certificates.

(c) Paragraphs (c)(1) through (3) of this section apply to persons who are currently certified as a signal employee for multiple railroads or are seeking to become certified signal employees for multiple railroads.

(1) A person who holds a current signal employee certificate from more than one railroad shall immediately notify the other certifying railroad(s) if they are denied signal employee certification or recertification under § 246.301 by a railroad or have their signal employee certification suspended or revoked under § 246.307 by a railroad.

(2) If a person has their signal employee certification suspended or revoked by a railroad under § 246.307, they shall not work as a certified signal employee for any railroad during the period that their certification is suspended or revoked, except as provided for in § 246.124(d).

(3) If a person has their signal employee certification suspended or revoked by a railroad under § 246.307, they shall notify any railroad from whom they are seeking signal employee certification that their signal employee certification is currently suspended or revoked by another railroad.

(d) Paragraphs (d)(1) through (3) of this section apply to persons who are currently certified as a signal employee and also currently certified in another railroad craft, such as a locomotive engineer or conductor:

(1) If a person's signal employee certification is revoked under § 246.307 for a violation of § 246.303(e)(11), they shall not work in another certified railroad craft, such as a locomotive engineer or conductor, during the period of revocation.

(2) If a person's signal employee certification is revoked under § 246.307 for a violation of § 246.303(e)(1) through (10), they may work in another certified railroad craft, such as a locomotive engineer or conductor, during the period of revocation.

(3) If any of a person's non-signal employee certifications are revoked for failure to comply with § 219.101 of this chapter, they shall not work as a certified signal employee for any railroad during the period of revocation.

(4) If any of a person's non-signal employee certifications are revoked for any reason other than a failure to comply with § 219.101 of this chapter, they may work as a certified signal employee during the period of revocation.

(e) A person who has had their signal employee certification revoked for failure to comply with § 219.101 of this chapter shall not obtain any other certification pursuant to this chapter from any railroad during the period of revocation.

(f) A person who has had any of their non-signal employee certifications revoked for failure to comply with § 219.101 of this chapter shall not obtain signal employee certification pursuant to this part from any railroad during the period of revocation.

(g) A railroad that denies a person signal employee certification or recertification under § 246.301 shall not, solely on the basis of that denial, deny or revoke that person's non-signal employee certifications or recertifications.

(h) A railroad that denies a person any non-signal employee certification or recertification pursuant to this chapter shall not, solely on the basis of that denial, deny or revoke that person's signal employee certification or recertification.

(i) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified in multiple crafts as long as the single certificate complies with all of the certificate requirements for those crafts.

(j) A person who is certified in multiple crafts and who is involved in a revocable event, as described in this chapter, may only have one certificate revoked for that event. The determination by the railroad as to which certificate to revoke must be based on the work the person was performing at the time the revocable event occurred.

§ 246.215 Railroad oversight responsibilities.

(a) No later than March 31 of each year (beginning in calendar year 2027), each Class I railroad (including the National Railroad Passenger Corporation), each railroad providing commuter service, and each Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified signal employees during the prior calendar year.

(b) Each review and analysis shall involve:

(1) The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;

(2) The number and nature of FRA reported accidents/incidents attributed to poor safety performance by signal employees; and

(3) The number and type of operational monitoring test failures recorded by certified signal employees conducting compliance tests pursuant to § 246.123.

(c) Based on that review and analysis, each railroad shall determine what action(s) it will take to improve the safety of railroad operations to reduce or eliminate future accidents/incidents of that nature.

(d) If requested in writing by FRA, by the president of a labor organization that represents the railroad's signal employees, or by a railroad's certified signal employee who is not represented by a labor organization, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.

(e) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories:

(1) Incidents involving noncompliance with railroad rules and procedures governing the removal from service of:

(i) Highway-rail and pathway grade crossing warning devices and systems; and

(ii) Wayside signal devices and systems;

(iii) Other devices or signal systems subject to this part.

(2) Incidents involving noncompliance with railroad rules and procedures governing the restoration of service of:

(i) Highway-rail and pathway grade crossing warning devices and systems; and

(ii) Wayside signal devices and systems;

(iii) Other devices or signal systems subject to this part.

(3) Incidents involving interference with the normal functioning of:

(i) Highway-rail and pathway grade crossing warning devices and systems; and

(ii) Wayside signal devices and systems.

(4) Incidents involving noncompliance with railroad rules and test procedures governing the inspection and testing of grade crossing warning devices and systems after installation, modification, disarrangement, maintenance, testing, and repair.

(5) Incidents involving noncompliance with railroad test procedures on devices or signal systems subject to this part.

(6) Incidents resulting in a signal false proceed, grade crossing activation failure, or accident or personal injury related to the same.

(7) Incidents involving noncompliance with the on-track safety requirements and blue signal requirements in parts 214 and 218 of this chapter.

(8) Incidents involving noncompliance with part 219 of this chapter.

(f) For reporting purposes, each category of detected poor safety conduct identified in paragraph (e) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflect incidents requiring an FRA accident/incident report under part 225 of this chapter; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

(g) For reporting purposes, each instance of detected poor safety conduct identified in paragraph (b) of this section shall be capable of being annotated to reflect the following:

(1) The nature of the remedial action taken, and the number of events subdivided, so as to reflect which of the following actions was selected:

(i) Imposition of informal discipline;

(ii) Imposition of formal discipline;

(iii) Provision of informal training; or

(iv) Provision of formal training; and

(2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the railroad:

(i) The person was withheld from service;

(ii) The person was dismissed from employment; or

(iii) The person was issued demerits. If more than one form of punishment was imposed, only the punishment deemed the most severe shall be shown.

(iv) The person's classification or type of signal employee service was removed or reduced.

(h) For reporting purposes, each instance of detected poor safety conduct identified in paragraph (b) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

(1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

(2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities: The National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment, or other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act.

(i) For reporting purposes, an instance of poor safety conduct involving a person who is a certified signal employee and is certified in another craft such as locomotive engineer or conductor, need only be reported once (*e.g.,* either under this section or § 240.309 or § 242.215 of this chapter). The determination as to where to report the instance of poor safety conduct should be based on the work the person was performing at the time the conduct occurred.

Subpart D—Denial and Revocation of Certification

§ 246.301 Process for denying certification.

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the candidate a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the candidate with any documents or records, including written statements, related to failure to meet a requirement of this part that support its pending denial decision.

(b) If a railroad denies a person certification or recertification, it shall issue a decision that complies with all of the following requirements:

(1) It must be in writing.

(2) It must explain the basis for the railroad's denial decision.

(3) It must address any explanation or rebuttal information that the candidate provides pursuant to paragraph (a) of this section.

(4) It must include the date of the railroad's decision.

(5) It must be served on the person no later than 10 days after the railroad's decision.

(c) A railroad shall not deny the person's certification for failing to comply with a railroad test procedure, signal standard, or practice which constitutes a violation under § 246.303(e)(1) through (10) if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the person's ability to comply with that railroad test procedure, signal standard, or practice.

§ 246.303 Criteria for revoking certification.

(a) It shall be unlawful to fail to comply with any of the railroad rules or practices described in paragraph (e) of this section.

(b) A certified signal employee who fails to comply with a railroad test procedure, signal standard or practice described in paragraph (e) of this section shall have their certification revoked.

(c) A certified signal employee who is assigned to monitor, mentor, or instruct a signal employee and fails to take appropriate action to prevent a violation of paragraph (e) of this section shall have their certification revoked.

(d) A certified signal employee who is called by a railroad to perform a duty other than that of a signal employee shall not have their signal employee certification revoked based on actions taken or not taken while performing that duty except for violations described in paragraph (e)(11) of this section.

(e) When determining whether to revoke a person's signal employee certification, a railroad shall only consider violations of Federal regulatory provisions or railroad rules, procedures, signal standards, and practices that involve:

(1) Interfering with the normal functioning of a highway-rail grade crossing warning system under § 234.209 of this chapter, or signal system under § 236.4 of this chapter, without providing an alternative means of protection. (Railroads shall only consider those violations that result in an activation failure or false proceed signal.)

(2) Failure to comply with a railroad rule or procedure when removing from service:

(i) Highway-rail or pathway grade crossing warning devices and systems;

(ii) Wayside signal devices or signal systems; or

(iii) Other devices or signal systems subject to this part.

(3) Failure to comply with railroad rule or procedure when placing in service or restoring to service:

(i) Highway-rail and pathway grade crossing warning devices and systems;

(ii) Wayside signal devices or signal systems; or

(iii) Other devices or signal systems subject to this part.

(4) Failure to perform an inspection or test to ensure a highway-rail or pathway grade crossing warning device or system functions as intended, when required by railroad rule or procedure, after:

(i) Installation, maintenance, testing or repair of the warning device or system;

(ii) Modification or disarrangement of the warning device or system; or

(iii) Malfunction or failure of the warning device or system;

(5) Failure to restore power to train detection device or highway-rail or pathway grade crossing warning device or system after manual interruption of the power source. (Railroads shall consider only those violations that result in activation failures.)

(6) Failure to comply with railroad validation or cutover procedures.

(7) Failure to comply with §§ 214.313, 214.319, 214.321, 214.323, 214.325, 214.327, or 214.329. Railroads shall consider only those violations directly involving a person who failed to obtain proper on-track safety before fouling a track.

(8) Failure to comply with § 218.25 of this chapter (Workers on a main track);

(9) Failure to comply with § 218.27 of this chapter (Workers on other than main track);

(10) Failure to comply with § 218.29 of this chapter (Alternate methods of protection);

(11) Failure to comply with § 219.101 of this chapter. However, such incidents shall be considered as a violation only for the purposes of § 246.305(a)(2) and (b).

(f) In making the determination as to whether to revoke a person's signal employee certification, a railroad shall only consider conduct described in paragraphs (e)(1) through (10) of this section that occurred within the three years prior to the determination.

(g) If in any single incident the person's conduct contravened more than one Federal regulatory provision or railroad rule, procedure, signal standard, or practice, that event shall be treated as a single violation for the purposes of this section.

(h) A violation of one or more railroad rules, procedures, signal standards, or practices described in paragraphs (e)(1) through (10) of this section that occurs during a properly conducted compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in § 246.305.

(i) A compliance test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under § 217.9 of this chapter, will not be considered a legitimate test of skill or knowledge, and will not be considered for revocation purposes.

(j) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.305 Periods of ineligibility.

(a) The starting date for a period of ineligibility described in this section shall be:

(1) For a person not currently certified, the date of the railroad's written determination that the most recent incident has occurred; or

(2) For a person currently certified, the date of the railroad's notification to the person that recertification has been denied or certification has been suspended.

(b) A period of ineligibility shall be determined according to the following standards:

(1) In the case of a single incident involving a violation of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices described in § 246.303(e)(1) through (10), the person shall have their certificate revoked for a period of 30 calendar days.

(2) In the case of two separate incidents involving a violation of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices described in § 246.303(e)(1) through (10), that occurred within 24 months of each other, the person shall have their certificate revoked for a period of six months.

(3) In the case of three separate incidents involving violations of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices, described in § 246.303(e)(1) through (11), that occurred within 36 months of each other, the person shall have their certificate revoked for a period of one year.

(4) In the case of four separate incidents involving violations of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices, described in § 246.303(e)(1) through (11), that occurred within 36 months of each other, the person shall have their certificate revoked for a period of three years.

(5) Where, based on the occurrence of violations described in § 246.303(e)(11), different periods of ineligibility may result under the provisions of this section and § 246.115, the longest period of revocation shall control.

(c) Any or all periods of revocation provided in paragraph (b) of this section may consist of training.

(d) A person whose certification is denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of ineligibility only if:

(1) The denial or revocation of certification in accordance with the provisions of paragraph (b) of this section is for a period of one year or less;

(2) Certification is denied or revoked for reasons other than noncompliance with § 219.101 of this chapter;

(3) The person is evaluated by a railroad officer and determined to have received adequate remedial training;

(4) The person successfully completes any mandatory program of training or retraining, if that is determined to be necessary by the railroad prior to return to service; and

(5) At least one half of the pertinent period of ineligibility specified in paragraph (b) of this section has elapsed.

§ 246.307 Process for revoking certification.

(a) If a railroad determines that a person, who is currently certified as a signal employee by the railroad, has violated a Federal regulatory provision, railroad test procedure, signal standard or practice described in § 246.303(e), the railroad shall revoke the person's signal employee certification in accordance with the procedures and requirements of this section.

(b) Except as provided for in § 246.115(f), if a railroad acquires reliable information that a person, who is currently certified as a signal employee by the railroad, has violated a Federal regulatory provision, railroad rule, procedure, signal standard, or practice described in § 246.303(e) or § 246.115(d), the railroad shall undertake the following process to determine whether revocation of the person's signal employee certification is warranted:

(1) The person's signal employee certification shall be suspended immediately.

(2) The person's employer(s) (if different from the suspending railroad) shall be immediately notified of the certification suspension and the reason for the certification suspension.

(3) Prior to or upon suspending the person's signal employee certification, the railroad shall provide the person with notice of: the reason for the suspension; the pending revocation; and an opportunity for a hearing before a presiding officer other than the investigating officer. This notice may initially be given either orally or in writing. If given orally, the notice must be subsequently confirmed in writing in a manner that conforms with the notification provisions of the applicable

collective bargaining agreement. If there is no applicable collective bargaining agreement notification provision, the written notice must be made within four days of the date the certification was suspended.

(4) The railroad must convene the hearing within the time frame required under the applicable collective bargaining agreement. If there is no applicable collective bargaining agreement or the applicable collective bargaining agreement does not include such a requirement, the hearing shall be convened within ten days of the date the certification is suspended unless the person requests or consents to a delay to the start of the hearing.

(5) Except as provided for in paragraph (c) of this section, the railroad shall provide the certified signal employee with a copy of the written information and a list of witnesses the railroad will present at the hearing at least 72 hours before the start of the hearing. If this information was provided by an employee of the railroad, the railroad shall make that employee available for examination during the hearing notwithstanding the terms of an applicable collective bargaining agreement.

(6) Following the hearing, the railroad must determine, based on the record of the hearing, whether revocation of the certification is warranted and state explicitly the basis for the conclusion reached. The railroad shall have the burden of proving that revocation of the person's signal employee certification is warranted under § 246.303.

(7) If the railroad determines that revocation of the person's signal employee certification is warranted, the railroad shall impose the proper period of revocation provided for in § 246.305 or § 246.115.

(8) The railroad shall retain the record of the hearing for three years after the date the decision is rendered.

(c) A hearing required by this section which is conducted in a manner that conforms procedurally to the applicable collective bargaining agreement shall satisfy the procedural requirements of this section.

(d) Except as provided for in paragraph (c) of this section, a hearing required under this section shall be conducted in accordance with the following procedures:

(1) The hearing shall be conducted by a presiding officer who can be any proficient person authorized by the railroad other than the investigating officer.

(2) The presiding officer shall convene and preside over the hearing and exercise the powers necessary to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in dispute.

(3) The presiding officer may:

(i) Adopt any needed procedures for the submission of evidence in written form;

(ii) Examine witnesses at the hearing; and

(iii) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may assist in achieving a prompt and fair determination of all material issues in dispute.

(4) All relevant and probative evidence shall be received into the record unless the presiding officer determines the evidence to be unduly repetitive or have such minimal relevance that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(5) Parties may appear at the hearing and be heard on their own behalf or through designated representatives. Parties may offer relevant evidence including testimony and may conduct such examination of witnesses as may be required for a full disclosure of the relevant facts.

(6) Testimony by witnesses at the hearing shall be recorded verbatim. Witnesses can testify in person, over the phone, or virtually.

(7) The record in the proceeding shall be closed at the conclusion of the hearing unless the presiding officer allows additional time for the submission of evidence.

(8) A hearing required under this section may be consolidated with any disciplinary action or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.

(9) A person may waive their right to a hearing. That waiver shall:

(i) Be made in writing;

(ii) Reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them; and

(iii) Be signed by the person making the waiver.

(e) Except as provided for in paragraph (c) of this section, a decision, required by this section, on whether to revoke a person's signal employee certification shall comply with the following requirements:

(1) No later than ten days after the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision as to whether the railroad is revoking the person's signal employee certification.

(2) The decision shall:

(i) Contain the findings of fact on all material issues as well as an explanation for those findings with citations to all applicable railroad rules, signal standards and procedures and any applicable Federal regulations;

(ii) State whether the railroad official found that the person's signal employee certification should be revoked;

(iii) State the period of revocation under § 246.305 (if the railroad official concludes that the person's signal employee certification should be revoked); and

(iv) Be served on the person and their representative, if any, with the railroad retaining proof of service for three years after the date the decision is rendered.

(f) The period that a person's signal employee certification is suspended in accordance with paragraph (b)(1) of this section shall be credited towards any period of revocation that the railroad assesses in accordance with § 246.305.

(g) A railroad shall revoke a person's signal employee certification if, during the period that certification is valid, the railroad acquires information that another railroad has revoked the person's signal employee certification in accordance with the provisions of this section. Such revocation shall run concurrently with the period of revocation imposed by the railroad that initially revoked the person's signal employee certification. The requirement to provide a hearing under this section is satisfied when any single railroad holds a hearing. No additional hearing is required prior to a revocation by more than one railroad arising from the same facts.

(h) A railroad shall not revoke a person's signal employee certification if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the person's ability to comply with the railroad test procedure, signal standard, or practice which constitutes a violation under § 246.303.

(i) A railroad may decide not to revoke a person's signal employee certification if sufficient evidence exists to establish that the violation of the railroad test procedure, signal standard, or practice described in § 246.303(e) was of a minimal nature and had no direct or potential effect on rail safety.

(j) If sufficient evidence meeting the criteria in paragraph (h) or (i) of this section becomes available, including prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section or prior to the convening of the hearing

provided for in this section, the railroad shall place the relevant information in the records maintained in compliance with:

(1) Section 246.215 for Class I railroads (including the National Railroad Passenger Corporation), railroads providing commuter service, and Class II railroads; and

(2) Section 246.203 for Class III railroads.

(k) If a railroad makes a good faith determination, after performing a reasonable inquiry, that the course of conduct provided for in paragraph (h) or (i) of this section is warranted, the railroad will not be in violation of paragraph (b)(1) of this section if it decides not to suspend the person's signal employee certification.

Subpart E—Dispute Resolution Procedures

§ 246.401 Review board established.

(a) Any person who has been denied certification or recertification, or has had their certification revoked and believes that a railroad incorrectly determined that they failed to meet the certification requirements of this part when making the decision to deny or revoke certification, may petition the Administrator to review the railroad's decision.

(b) The Administrator has delegated initial responsibility for adjudicating such disputes to the Certification Review Board (Board). The Board shall be composed of FRA employees.

§ 246.403 Petition requirements.

(a) To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with this section.

(b) Each petition shall:

(1) Be in writing;

(2) Be filed no more than 120 days after the date the railroad's denial or revocation decision was served on the petitioner, except as provided for in paragraph (d) of this section;

(3) Be filed on *https://www.regulations.gov;*

(4) Include the following contact information for the petitioner and petitioner's representative (if petitioner is represented):

(i) Full name;

(ii) Daytime telephone number; and

(iii) Email address;

(5) Include the name of the railroad and the name of the petitioner's employer (if different from the railroad that revoked petitioner's certification);

(6) Contain the facts that the petitioner believes constitute the improper action by the railroad and the arguments in support of the petition; and

(7) Include all written documents in the petitioner's possession or reasonably available to the petitioner that document the railroad's decision.

(c) If requested by the Board, the petitioner must provide a copy of the information under 49 CFR 40.329 that laboratories, medical review officers, and other service agents are required to release to employees. The petitioner must provide a written explanation in response to a Board request if written documents, that should be reasonably available to the petitioner, are not supplied.

(d) The Board may extend the petition filing period in its discretion provided the petitioner provides good cause for the extension and:

(1) The request for an extension is filed before the expiration of the period provided for in paragraph (b)(2) of this section; or

(2) The failure to timely file was the result of excusable neglect.

(e) A party aggrieved by a Board decision to deny a petition as untimely or not in compliance with the requirements of this section may file an appeal with the Administrator in accordance with § 246.411.

§ 246.405 Processing certification review petitions.

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall be sent to the petitioner (if an email address is provided), petitioner's representative (if any), the railroad, and petitioner's employer (if different from the railroad that revoked petitioner's certification). The acknowledgment shall contain the docket number assigned to the petition and will notify the parties where the petition can be accessed.

(b) Within 60 days from the date of the acknowledgment provided in paragraph (a) of this section, the railroad may submit to FRA any information that the railroad considers pertinent to the petition and shall supplement the record with any relevant documents in its possession, such as hearing transcripts and exhibits, that were not submitted by the petitioner. Late filings will only be considered to the extent practicable. A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number for the petition;

(2) Provide the railroad's email address;

(3) Serve a copy of the information being submitted to the petitioner and petitioner's representative (if any); and

(4) Be filed on *https://www.regulations.gov.*

(c) The petition will be referred to the Board for a decision after a railroad's response is received or 60 days from the date of the acknowledgment provided in paragraph (a) of this section, whichever is earlier. Based on the record, the Board shall have the authority to grant, deny, dismiss, or remand the petition. If the Board finds that there is insufficient basis for granting or denying the petition, the Board may issue an order affording the parties an opportunity to provide additional information or argument consistent with its findings.

(d) When considering procedural issues, the Board will grant the petition if the petitioner shows:

(1) That a procedural error occurred; and

(2) The procedural error caused substantial harm to the petitioner.

(e) When considering factual issues, the Board will grant the petition if the petitioner shows that the railroad did not provide substantial evidence to support its decision.

(f) When considering legal issues, the Board will determine whether the railroad's legal interpretations are correct based on a *de novo* review.

(g) The Board will only consider whether the denial or revocation of certification or recertification was improper under this part and will grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision. For example,the Board will not consider whether the railroad properly applied its own more stringent requirements.

(h) The Board's written decision shall be served on the petitioner and/or petitioner's representative (if any), the railroad, and petitioner's employer (if different from the railroad that revoked petitioner's certification).

§ 246.407 Request for a hearing.

(a) If adversely affected by the Board's decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by § 246.409.

(b) To exercise that right, the adversely affected party shall file a written request for a hearing within 20 days of service of the Board's decision on that party. The request must be filed in the docket on *https://www.regulations.gov* that was used when the case was before the Board.

(c) A written request for a hearing must contain the following:

(1) The name, telephone number, and email address of the requesting party and the party's designated representative (if any);

(2) The name, telephone number, and email address of the respondent;

(3) The docket number for the case while it was before the Board;

(4) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question; and

(5) The signature of the requesting party or the requesting party's representative (if any).

(d) Upon receipt of a hearing request complying with paragraph (c) of this section, FRA shall arrange for the appointment of a presiding officer who shall schedule the hearing for the earliest practicable date.

(e) If a party fails to request a hearing within the period provided in paragraph (b) of this section, the Board's decision will constitute final agency action.

§ 246.409 Hearings.

(a) An administrative hearing for a signal employee certification petition shall be conducted by a presiding officer, who can be any person authorized by the Administrator.

(b) The presiding officer shall convene and preside over the hearing. The hearing shall be a *de novo* hearing to find the relevant facts and determine the correct application of this part to those facts. The presiding officer may determine that there is no genuine issue covering some or all material facts and limit evidentiary proceedings to any issues of material fact as to which there is a genuine dispute.

(c) The presiding officer may exercise the powers of the Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(d) The presiding officer may authorize discovery of the types and quantities which in the presiding officer's discretion will contribute to a fair hearing without unduly burdening the parties. The presiding officer may impose appropriate non-monetary sanctions, including limitations as to the presentation of evidence and issues, for any party's willful failure or refusal to comply with approved discovery requests.

(e) Every petition, motion, response, or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or representative of record, or by any other person. If signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person subscribing any document constitutes a certification that they have read the document; that to the best of their knowledge, information, and belief, every statement contained in the document is true and no such statements are misleading; and that it is not interposed for delay or to be vexatious.

(f) After the request for a hearing is filed, all documents filed or served upon one party must be served upon all parties. Each party may designate a person upon whom service is to be made when not specified by law, regulation, or directive of the presiding officer. If a party does not designate a person upon whom service is to be made, then service may be made upon any person having subscribed to a submission of the party being served, unless otherwise specified by law, regulation, or directive of the presiding officer. Proof of service shall accompany all documents when they are tendered for filing.

(g) If any document initiating, filed in, or served in, a proceeding is not in substantial compliance with the applicable law, regulation, or directive of the presiding officer, the presiding officer may strike or dismiss all or part of such document, or require its amendment.

(h) Any party to a proceeding may appear and be heard in person or by an authorized representative.

(i) Any person testifying at a hearing or deposition may be accompanied, represented, and advised by an attorney or other representative, and may be examined by that person.

(j) Any party may request to consolidate or separate the hearing of two or more petitions by motion to the presiding officer when they arise from the same or similar facts or when the matters are for any reason deemed more efficiently heard together.

(k) Except as provided in § 246.407(e) and paragraph (s)(4) of this section, whenever a party has the right or is required to take action within a period prescribed by this part, or by law, regulation, or directive of the presiding officer, the presiding officer may extend such period, with or without notice, for good cause, provided another party is not substantially prejudiced by such extension. A request to extend a period which has already expired may be denied as untimely.

(l) An application to the presiding officer for an order or ruling not otherwise specifically provided for in this part shall be by motion. The motion shall be filed with the presiding officer and, if written, served upon all parties. All motions, unless made during the hearing, shall be written. Motions made during hearings may be made orally on the record, except that the presiding officer may direct that any oral motion be reduced to writing. Any motion shall state with particularity the grounds therefor and the relief or order sought and shall be accompanied by any affidavits or other evidence desired to be relied upon which is not already part of the record. Any matter submitted in response to a written motion must be filed and served within 14 days of the motion, or within such other period as directed by the presiding officer.

(m) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim. The presiding officer shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the presiding officer. The presiding officer may permit oral argument on any issues for which the presiding officer deems it appropriate and beneficial. Any evidence or argument received or proffered orally shall be transcribed and made a part of the record. Any physical evidence or written argument received or proffered shall be made a part of the record, except that the presiding officer may authorize the substitution of copies, photographs, or descriptions, when deemed to be appropriate.

(n) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. Notwithstanding paragraph (m) of this section, all relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(o) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided for in § 209.7 of this chapter;

(3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn, or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(p) The petitioner before the Board, the railroad involved in taking the

certification action, and FRA shall be parties at the hearing. All parties may participate in the hearing and may appear and be heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.

(q) The party requesting the administrative hearing shall be the ''hearing petitioner.'' The party that the Board issued its decision in favor of will be a respondent. At the start of each proceeding, FRA will be a respondent as well. The hearing petitioner shall have the burden of proving its case by a preponderance of the evidence.

(r) The record in the proceeding shall be closed at the conclusion of the evidentiary hearing unless the presiding officer allows additional time for the submission of additional evidence. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(s) At the close of the record, the presiding officer shall prepare a written decision in the proceeding. The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis for each, concerning all material issues of fact or law presented on the record;

(2) Shall be served on all parties to the proceeding;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Is not precedential.

§ 246.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal in the presiding officer's docket. The appeal must be filed within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a reply for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may remand, vacate, affirm, reverse, alter, or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.

(f) An appeal from a Board decision pursuant to § 246.403(e) must be filed in the Board's docket within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

Appendix A to Part 246—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

(1) The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of § 246.111. This provision requires that railroads consider the motor vehicle driving record of each person prior to issuing them certification or recertification as a signal employee.

(2) To fulfill that obligation, a railroad is required to review a certification candidate's recent motor vehicle driving record for information described in § 246.111(m). Generally, that will be a single record on file with the state agency that issued the candidate's current motor vehicle driver's license. However, a motor vehicle driving record can include multiple documents if the candidate has been issued a motor vehicle driver's license by more than one state agency or a foreign country.

(3) The right of railroad workers, their employers, or prospective employers to have access to a state motor vehicle licensing agency's data concerning an individual's driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers, such as railroads, can obtain such data, there are some states where privacy concerns make such access very difficult or impossible. Since individuals are generally entitled to obtain access to their driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places the responsibility on individuals who want to serve as certified signal employees to request that their current state motor vehicle licensing agency (or agencies) furnish such data directly to the railroad that is considering certification (or recertification) of the individual as a signal employee. Depending on the procedures established by the state motor vehicle licensing agency, the individual may be asked to send the state agency a brief letter requesting such action or to execute a state agency form that accomplishes the same effect. Requests for an individual's motor vehicle driving record normally involve payment of a nominal fee established by the state agency as well. In rare instances, when a certification (or recertification) candidate has been issued multiple licenses, an individual may be required to submit multiple requests.

(4) Once the railroad has obtained the individual's motor vehicle driving record(s), the railroad is required to afford the certification (or recertification) candidate an opportunity to review and comment on the record(s) in writing pursuant to § 246.301 if the motor vehicle driving records contain information that could form the basis for denying the person certification. This opportunity to review and comment must occur before the railroad renders a certification decision based on information in the record(s). The railroad is required to evaluate the information in the certification (or recertification) candidate's motor vehicle driving record(s) pursuant to the provisions of this part.

Appendix B to Part 246—Medical Standards Guidelines

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 246.117 and 246.118.

(2) For any examination performed to determine whether a person meets the visual acuity requirements in § 246.117, it is recommended that such examination be performed by a licensed optometrist or a technician who reports to a licensed optometrist. It is also recommended that any test conducted pursuant to § 246.117 be performed according to any directions supplied by the test's manufacturer and any ANSI standards that are applicable.

(3) For any examination performed to determine whether a person meets the hearing acuity requirements in § 246.118, it is recommended that such examination be performed by a licensed or certified audiologist or a technician who reports to a licensed or certified audiologist. It is also recommended that any test conducted pursuant to § 246.118 be performed according to any directions supplied by the test's manufacturer and any ANSI standards that are applicable.

(4) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column

and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

TABLE 1 TO APPENDIX B TO PART 246

Accepted tests	Failure criteria
Pseudoisochromatic Plate Tests	
American Optical Company 1965	5 or more errors on plates 1–15.
AOC—Hardy-Rand-Ritter plates—second edition	Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book).
Dvorine—Second edition	3 or more errors on plates 1–15.
Ishihara (14 plate)	2 or more errors on plates 1–11.
Ishihara (16 plate)	2 or more errors on plates 1–8.
Ishihara (24 plate)	3 or more errors on plates 1–15.
Ishihara (38 plate)	4 or more errors on plates 1–21.
Richmond Plates 1983	5 or more errors on plates 1–15.
Multifunction Vision Tester	
Keystone Orthoscope	Any error.
OPTEC 2000	Any error.
Titmus Vision Tester	Any error.
Titmus II Vision Tester	Any error.

(5) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that ''yellow signals'' do not always appear to be the same. It is not acceptable to use ''yarn'' or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and § 246.117(c)(3).

(6) An examinee who fails to meet the criteria in the chart may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria for serving as a certified signal employee. The intent of §§ 246.117(d) and 246.118(d) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely perform as a certified signal employee. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request, but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(7) Certified signal employees who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2024–09958 Filed 5–20–24; 8:45 am]

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Part IV

The President

Notice of May 20, 2024—Continuation of the National Emergency With Respect to the Stabilization of Iraq

Federal Register
Vol. 89, No. 99
Tuesday, May 21, 2024

Presidential Documents

Title 3—

The President

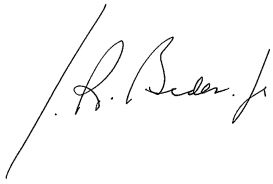
Notice of May 20, 2024

Continuation of the National Emergency With Respect to the Stabilization of Iraq

On May 22, 2003, by Executive Order 13303, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

The obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13303, as modified in scope and relied upon for additional steps taken in Executive Order 13290 of March 20, 2003, Executive Order 13315 of August 28, 2003, Executive Order 13350 of July 29, 2004, Executive Order 13364 of November 29, 2004, Executive Order 13438 of July 17, 2007, and Executive Order 13668 of May 27, 2014, must continue in effect beyond May 22, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the stabilization of Iraq declared in Executive Order 13303.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 20, 2024.

[FR Doc. 2024–11315
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