

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,
Case No. GE-2020-0373, Spire Missouri, Inc., d/b/a Spire

FROM: Kathleen A. McNelis, PE, Engineer Manager, Safety Engineering Department
John D. Kottwitz, Associate Engineer, Safety Engineering Department

/s/ Kathleen A. McNelis, PE / 2-19-2021 /s/ Bob Berlin / 2-19-2021
Safety Engineering Department/ Date Staff Counsel Division / Date

SUBJECT: Staff Recommendation Regarding Spire Missouri Motion to Modify the
Commission's December 2, 2020 Order

DATE: February 19, 2021

Background: Waiver and Waiver Extension Granted by Commission

The Commission issued its *Order Approving Application for Temporary Waiver and Directing Written Notice* (“Order”) on June 11, 2020, and an *Order Nunc Pro Tunc* correcting the Order on June 16, 2020. The Order provided Spire Missouri, Inc. (“Spire”) with an extension to December 31, 2020 for required deadlines for completing Atmospheric Corrosion Inspections (“ACIs”) as required by 20 CSR 4240-40.030(9)(Q)1. [corresponding federal regulation is 49 C.F.R. 192.481(a)], and leakage surveys as required by 20 CSR 4240-40.030(13)(M)1., 20 CSR 4240-40.030(13)(M)2.A. and 20 CSR 4240-40.030(13)(M)2.B. [corresponding federal regulations are 49 C.F.R. 192.723(a) and (b)(1)]. The Order was limited to instances where Spire facilities were installed inside customer premises, and contained certain conditions and limitations. Copies of both orders were provided to the U.S. Secretary of Transportation. The Pipeline and Hazardous Materials Safety Administration (PHMSA) provided a letter dated July 13, 2020 stating that it did not object to issuance of this waiver by the Commission for the Spire Missouri East and Spire Missouri West pipeline facilities provided the Company complies with the conditions set forth in the orders granting the waiver.

The Commission issued its *Order Modifying Temporary Waiver and Directing Written Notice* (“2nd Order”) on December 2, 2020. The 2nd Order provided Spire with an extension to March 31, 2021 for required deadlines for completing ACIs as required by 20 CSR 4240-40.030(9)(Q)1. [corresponding federal regulation is 49 C.F.R. 192.481(a)], and leakage surveys as required by 20 CSR 4240-40.030(13)(M)1., 20 CSR 4240-40.030(13)(M)2.A. and 20 CSR 4240-

40.030(13)(M)2.B. [corresponding federal regulations are 49 C.F.R. 192.723(a) and (b)(1)]. The 2nd Order was limited to instances where Spire facilities were installed inside customer premises occupied or controlled by customers who either refused Spire entry for inspection or refused to schedule an appointment for inspection due to COVID-19 concerns, and contained certain conditions and limitations that are addressed below. A copy was provided to the U.S. Secretary of Transportation. PHMSA provided a letter dated December 17, 2020 stating that it did not object to issuance of the waiver extension by the Commission for the Spire Missouri East and Spire Missouri West pipeline facilities provided the Company complies with the conditions set forth in the 2nd Order granting the waiver.

Spire's Motion, Coordination with PHMSA and Staff Analysis

Spire's January 18, 2021 Motion

Spire filed its motion to modify the 2nd Order on January 18, 2021. Subsequently on January 19, 2021, the Commission ordered Staff to file a recommendation no later than January 25, 2021. Staff's motion to extend the filing date to no later than February 17, 2021 was approved by the Commission.

Paragraph 8 of Spire's January 18, 2021 motion requests to further extend the temporary waiver from March 31, 2021 to October 31, 2021, and states:

It has become readily apparent that the rollout of the COVID-19 vaccine has not been as expedient as expected, and that the pandemic will still be a serious issue well past March 31 of this year. While Spire Missouri has been working diligently to complete the ACI's and leak surveys, there is still a relatively small number of customers, approximately 277, who are declining this work due to the coronavirus pandemic, and the Company anticipates that there will be more. Absent a modification of the Order, the Company will either have to cut customers off from service in order to maintain compliance or risk being in violation of the Commission's gas safety rules.

Staff agrees that the current number of customers declining work due to concerns related to the coronavirus pandemic (277 according to Spire) is relatively small. Staff does not find sufficient support in Spire's application, however, for an extension through October 31, 2021. Customers over 65 or with high-risk health conditions are currently eligible for vaccination under Phase 1B, Tier 2 of the Missouri vaccination plan and Spire's inspectors will be eligible when

Phase 1B, Tier 3 is opened for vaccination. Staff believes that a combination of the safety measures taken by Spire during the inspections combined with the availability of vaccines for high risk individuals will likely address many of the COVID related risks sooner than October 31, 2021, and recommends an extension through July 31, 2021.

Paragraph 9 of Spire’s January 18, 2021 motion states:

Spire Missouri agrees to continue to abide by the conditions set forth in the Commission’s June 11, 2020 Order, and subsequently adopted in the December 2, 2020 Order, however, the Company requests that the condition that the Company complete inspections of each noncompliant facility by no later than one year after the facility’s delinquent date, be removed or further modified to allow until October 31, 2021 for the inspection to be completed. Without this modification, the Company will not be in compliance with the Order. There is a relatively small number of customers who could potentially be impacted by the one-year limitation. Absent the removal of this limitation, Spire would either have to cut those customers off to maintain compliance or risk being found in violation of gas safety rules.

Staff reviewed data regarding the number of customers by month with delinquent dates extending beyond one-year¹. Staff notes that Spire has identified a total of ** _____ ** where ACIs and leakage surveys may be more than one year overdue between now and July 31, 2021, occurring during the months of ** _____ **.

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¹ Based on Exhibit 15.1 provided with Spire response to Staff Data Request No. 0015.1 dated January 28, 2021.

Staff is concerned that adding additional time to perform inspections that are already overdue by a year would increase the safety risks associated with corrosion and leaks. Staff's concern arises from the fact that instances of atmospheric corrosion and leaks are discovered by Spire when it performs the required inspections. During the past three years of performing routine ACIs and leakage surveys on its facilities located inside customers' premises, Spire has discovered instances of atmospheric corrosion on its facilities² requiring remedial measures³, and has discovered gas leaks that were not reported by customers as odor calls⁴.

However, Staff recognizes that some customers continue to have safety concerns that are specific to COVID. Staff notes that the customer safety risk associated with Spire conducting the ACIs and leakage surveys is minimized by the relatively short time required to complete the inspections and leakage surveys, and Spire's safety protocols for entering a customer's residence. Spire has the ability to use a high level of personal protective equipment (PPE) when the Spire representative conducts the inside ACIs and leak surveys to prevent coronavirus exposure to or from the customer.⁵ Further, customers over 65 or with high-risk health conditions are currently eligible for vaccination under Phase 1B, Tier 2 of the Missouri vaccination plan and Spire's inspectors will be eligible when Phase 1B, Tier 3 is opened for vaccination. Staff believes that a combination of the safety measures taken by Spire during the inspection and availability of vaccines for high risk individuals will address many of the COVID related risks encountered early in the pandemic.

Since there may be exceptional cases where COVID related safety precautions and vaccines are not sufficient, Staff is proposing that an additional condition be added to allow customers to request further delays due to medical necessity. In conjunction with this condition, Staff is recommending that Spire supplement its public awareness outreach to customers for whom

² Spire's response to Staff Data Request No. 0009 indicated the number of instances where indications of atmospheric corrosion were noted during the inspections on inside facilities in 2018 was 1834, in 2019 was 1025, and in 2020 was 1019.

³ Spire's response to Staff Data Request No. 0010 stated that the Company provided protection as required by 20 CSR 4240-40.030(9)(Q)3 at 1834 locations in 2018, 1025 locations in 2019, and 1019 locations in 2020

⁴ Spire response to Staff Data Request No. 0011.1 stated that the total numbers of leaks that were discovered on inside facilities as a result of leak surveys is 16 leaks in 2018, 18 leaks in 2019, and 18 leaks in 2020

⁵ Spire response to Staff Data Request No. 0004

ACIs and leakage surveys of facilities are delayed with educational material on what to do if a customer smells gas, and the safety risks associated with corrosion and leaks on indoor facilities.

Paragraph 11 of Spire's January 18, 2021 motion states:

Spire would also note that PHMSA is seeking to make a change to its rules regarding the inspection interval for monitoring ACIs on distribution service lines, 49 CFR 192.481. Currently, the inspection interval set forth in the PHMSA rule is in line with the state rule of requiring inspections once every 3 years, with intervals not to exceed 39 months. The final rule, if implemented would change the inspections to once every 5 years, with intervals not to exceed 63 months unless corrosion was identified at the last inspection, in which case the interval for the subsequent inspection would remain once every three years. PHMSA noted that there has not been a history of incidents caused by atmospheric corrosion on distribution service lines since at least 1986 and did not anticipate a decrease in safety from this revision. If implemented, the final PHMSA rule would go into effect, March 12, 2021.

Staff notes that the Commission does not automatically adopt amendments of federal requirements into the Commission's pipeline safety rules, and has not yet opened a rulemaking case related to the federal amendments that Spire references. Further, Staff is uncertain at this time if the referenced federal final rule will be implemented by March 12, 2021 as Spire stated in Paragraph 11 of its January 18, 2021 motion. A January 20, 2021 memo from Robert Fairweather, Acting Director of the Office of Management and Budget, to the Heads of Executive Departments and Agencies discusses implementation of recent regulation amendments and postponements of effective dates. (Copy of memo provided as Attachment A.)

Conditions and Limitations in Currently Effective Temporary Waiver in Case No. GE-2020-0373

The Commission's Order issued December 2, 2020 in Case No. GE-2020-0373 granted an extension of the temporary waiver, subject to limitations and conditions, pertaining to requirements for:

- A. Atmospheric corrosion inspections required by 20 CSR 4240-40.030(9)(Q)1. [corresponding federal regulation is 49 CFR 192.481(a)], and
- B. Leakage surveys required by 20 CSR 4240-40.030(13)(M)1., (13)(M)2.A. and (13)(M)2.B. [corresponding federal regulations are 49 CFR 192.723(a) and (b)(1)],

to the extent that such ACIs and leakage surveys require entry into residential customer premises.

The December 2, 2020 waiver extension is subject to the following limitations and conditions:

- a. The last day of the extended waiver period shall be March 31, 2021;
- b. The extended waiver period applies only to residential facilities occupied or controlled by customers who, because of COVID-19 concerns, either refuse Spire entry for inspection or refuse to schedule an appointment for inspection;
- c. Spire shall document each instance of refused entry or refusal to schedule an appointment for inspection because of COVID-19 concerns;
- d. Beginning January 1, 2021, Spire shall document all noncompliant facilities eligible for extended waiver pursuant to this order and shall provide a monthly report to the Commission, by submission directly to Staff, listing all noncompliant facilities and providing documentation required by provision (c) above;
- e. Spire shall conduct additional public awareness efforts to notify customers when inspection of facilities is delayed pursuant to this temporary waiver;
- f. Spire shall conduct weekly odorant intensity tests, in accordance with the test requirements of 20 CSR 4240-40.030(12)(P)6, in areas where atmospheric corrosion monitoring or leakage surveys are delayed pursuant to this temporary waiver.

Staff reviewed this set of conditions and determined that conditions b., c., d, e., and f. apply and should be continued for the current extension request. Condition a. should be modified to reflect the new extension period if one is approved. Condition e. should be modified to include additional public education related to what to do if the customer smells gas, and the potential safety risks associated with corrosion and leaks on indoor facilities.

Further, the Commission's Order issued December 2, 2020 in Case No. GE-2020-0373 stated:

The Commission's June 11, 2020 Order Approving Application for Temporary Waiver and Directing Written Notice is modified by this order only to extend the period of waiver for eligible residential facilities as stated above.

Staff notes that the June 11, 2020 Order also requires that Spire shall complete inspections of each noncompliant facility by no later than one year after the facility's delinquent date as a condition of the temporary waiver from Commission Rule 20 CSR 4240-40.030(9)(Q)1. (condition 1.h.) and Commission Rules 20 CSR 4240-40.030(13)(M)1, 20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B (condition 2.h.).

The oldest delinquent dates begin in May 2020⁶, so conditions 1.h. and 2.h. would need to be removed or modified to conduct the ACIs and leakage surveys at more than one year past the delinquent date as currently requested by Spire.

Utility termination of service is to be avoided in most cases, but is warranted when necessary to ensure safe and adequate service. Staff notes that other adverse consequences (e.g., heating) due to termination are minimized during summer months, so Staff recommends that the one-year limitation only be removed when there is a medical necessity for the customer to have natural gas service. An example of the requirements to define medical necessity can be found at 20 CSR 4240-13.055(1)(D)2. and only until the summer date of July 31, 2021.

Conditions and Limitations in Related Commission Waivers

The Commission previously addressed conditions and limitations related to COVID-19 concerns in Case No. GE-2020-0297. Staff presented its review and findings regarding those conditions and limitations in Staff's recommendation it filed in that case on November 20, 2020. That review and findings continue to apply in the same manner, with no additional discussion is necessary in this case.

Staff Coordination with PHMSA

The Commission has an annual certification from the U.S. DOT under 49 U.S.C. Section 60105 of 49 U.S. Code to implement its pipeline safety program. 49 U.S.C. § 60118 addresses waivers of pipeline safety standards by state authorities. 49 U.S.C. § 60118 (d) requires that:

If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt

⁶ Spire response to Staff Data Request No. 0015.1 dated January 28, 2021 provided Exhibit 15.1 ** _____

opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

In guidelines provided by PHMSA to state pipeline safety programs, PHMSA encourages state programs to coordinate review of waiver requests with PHMSA prior to finalizing state approval. Staff therefore submitted a copy of Spire's January 18, 2021 motion to PHMSA for review. PHMSA requested to review a draft of Staff recommended limitations and conditions with respect to the motion. Staff provided these to PHMSA for review on February 11, 2021. PHMSA provided input to Staff verbally on February 17, 2021, and indicated that Staff could move forward with its recommendations.

Staff Recommendation to Grant Extension of Temporary Waiver Subject to Conditions

1. Staff recommends that the Commission partially grant Spire's request to extend the temporary waiver of compliance with the requirements of 20 CSR 4240-40.030(9)(Q)1. and 20 CSR 4240-40.030(13)(M)1. and 2.A. and B. past March 31, 2021, for residential customers who refuse entry to the home due to the coronavirus pandemic, subject to the limitations and conditions listed below. Instead of extending the waiver to October 31, 2021 as requested by Spire, Staff recommends that the waiver be extended to July 31, 2021, and subject to the following recommended limitations and conditions as follows:
 - A. Waiver extension ends on July 31, 2021;
 - B. Waiver of atmospheric corrosion inspections and leakage surveys after December 31, 2020 continues to apply only to Spire facilities inside residential customer premises in instances when the customer refuses entry to the Spire gas service technician or contractor, or refuses to make an appointment for entry, due to COVID-19 related concerns. Refusal of entry or appointment must be documented for each instance;
 - C. Spire shall continue to document the number of incidents of noncompliance following December 31, 2020 and file a monthly update to the Commission that includes a list of the customers and documentation of the customer's reason for not allowing entry or appointment due to the coronavirus pandemic;
 - D. Spire shall continue to conduct additional public awareness efforts to notify customers when atmospheric corrosion inspections and leakage survey of facilities is delayed pursuant to this extension of the temporary waiver. Such efforts must include providing educational material on what to do if a customer smells gas, and

the safety risks associated with corrosion and leaks on indoor facilities. Delivery of this educational material to each customer refusing entry must be documented for each instance;

- E. Spire shall continue to conduct weekly odorant intensity tests, in accordance with the test requirements of 20 CSR 4240-40.030(12)(P)6., in areas where atmospheric corrosion inspections and leakage surveys are delayed pursuant to this temporary waiver;
 - F. Spire shall either complete an inspection and survey of each noncompliant facility or turn off the natural gas service by no later than one year past the intervals required in 20 CSR 4240-40.030. The requirement to turn off natural gas service does not apply if there is a medical necessity as defined at 20 CSR 4240-13.055(1)(D)2.; and
 - G. Spire shall notify the Commission on June 30, 2021 of the completion status of the remaining atmospheric corrosion inspections and leakage surveys for each noncompliant facility, an estimated schedule to complete them or turn them off, and a proposal for any further actions needed by the Commission.
2. Staff further recommends that the Commission establish an effective date that allows 60 days for PHMSA to review the granted waiver extension and have an opportunity to object prior to the effective date.⁷ Staff requests that the Commission's Order be promptly emailed to PHMSA in the same manner as the initial order granting the temporary waiver and the second order that extended the waiver to March 31, 2021.

⁷ Staff advises that waiver of 20 CSR 4240-40.030(9)(Q)1. requires waiver of 49 C.F.R. 192.481(a) and waiver of 20 CSR 4240-40.030(13)(M)1. and 2.A. and B. requires waiver of 49 C.F.R. 192.723(a) and (b)(1).

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of Spire)
Missouri Inc. d/b/a Spire for a Temporary)
Waiver from Commission Rules 20 CSR) **File No. GE-2020-0373**
4240-40.030 (9)(Q), (13)(M), (15)(C),)
(15)(D) and (15)(E) and Orders Pertaining)
to Inspections and Replacements)

AFFIDAVIT OF KATHLEEN A. MCNELIS, PE AND JOHN D. KOTTWITZ

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COME NOW Kathleen A. McNelis, PE, and John D. Kottwitz, and on their oath declares that they are of sound mind and lawful age; that they contributed to the foregoing *Staff Memorandum*; and that the same is true and correct according to their best knowledge and belief, under penalty of perjury.

Further the Affiants sayeth not.

/s/ Kathleen A. McNelis, PE
Kathleen A. McNelis, PE

/s/ John D. Kottwitz
John D. Kottwitz



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 20, 2021

M-21-14

MEMORANDUM FOR THE HEADS AND ACTING HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES

FROM: Robert Fairweather
Acting Director

SUBJECT: Implementation of Memorandum Concerning Regulatory Freeze Pending Review

This Memorandum provides guidance on implementing the Chief of Staff Memorandum of January 20, 2021, concerning “Regulatory Freeze Pending Review” (“Regulatory Freeze memorandum”). This memorandum applies to rules as defined in 5 U.S.C. § 551(4), including regulatory actions under Executive Order 12866, as amended, and guidance documents as this term was defined in Executive Order 13422 when that order was in effect.¹

Postponement of Effective Dates of Certain Published Rules

Paragraph 3 of the Regulatory Freeze memorandum describes the agency option to temporarily postpone agency rules to permit review by an agency head appointed or designated by the President after noon on January 20, 2021.²

With respect to rules that have been published in the *Federal Register*, or rules that have been issued in any manner, but have not taken effect, consider postponing the rules' effective dates for 60 days from the date of this memorandum, consistent with applicable law and subject to the exceptions described in paragraph 1, for the purpose of reviewing any questions of fact, law, and policy the rules may raise. For rules postponed in this manner, during the 60-day period, where appropriate and consistent with applicable law, consider opening a 30-day comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by those rules, and consider pending petitions for reconsideration involving such rules. As appropriate and consistent with applicable law, and where necessary to continue to review these questions of fact, law, and policy, consider further delaying, or

¹ 5 U.S.C. § 551(4); Executive Order 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Oct. 4, 1993); Executive Order 13422, Further Amendment to Executive Order 12866 on Regulatory Planning and Review (Jan. 18, 2007).

² The department or agency head may delegate this power of review to any other person so appointed or designated by the President, consistent with applicable law.

publishing for notice and comment proposed rules further delaying, such rules beyond the 60-day period.

Your agency staff has, or may shortly, identify rules that have not yet taken effect and about which questions involving law, fact, or policy have been raised. For such rules, you should consider postponing the effective dates for 60 days and reopening your rulemaking processes. Please ask your staff to promptly contact your Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) desk officer with a list of those rules.

Your decision for each such rule should include consideration of whether:

- (1) the rulemaking process was procedurally adequate;
- (2) the rule reflected proper consideration of all relevant facts;
- (3) the rule reflected due consideration of the agency's statutory or other legal obligations;
- (4) the rule is based on a reasonable judgment about the legally relevant policy considerations;
- (5) the rulemaking process was open and transparent;
- (6) objections to the rule were adequately considered, including whether interested parties had fair opportunities to present contrary facts and arguments;
- (7) interested parties had the benefit of access to the facts, data, or other analyses on which the agency relied; and
- (8) the final rule found adequate support in the rulemaking record.

If in your considered judgment the identified rules already satisfy the above criteria, you need do nothing further. However, if any of these rules does not satisfy these criteria, you should consider postponing the effective date for 60 days for the purpose of enabling further review, consistent with applicable law. In no event should you postpone the effective date of rules indefinitely.

If you determine that it is appropriate and consistent with applicable law to postpone the effective date of a rule for purposes of enabling further review, you should promptly seek public comment about your contemplated postponement of the effective date, including the impacts of a delay, as well as about the legal, factual, or policy issues raised by the rule in question. You should provide at least 30 days for comment where the effective date of the rule is not imminent.³ If the rule will take effect before there is sufficient time to solicit and review comments on the extension of the effective date, you should consult immediately with agency counsel and OIRA about the appropriate course of action to delay the rule.

Following the comment period, and after considering any pending petitions for reconsideration, you should take appropriate steps to ensure fair evaluation of (a) whether to extend the effective date and (b) the rule in question, which you may wish to amend. If in light of the comments you decide that a further postponement of the effective date is necessary, appropriate, and consistent with applicable law, you should consult with agency counsel and OIRA about your decision before taking action to further postpone the effective date.

³ See Admin. Conf. of the U.S., Recommendation 2012-2, *Midnight Rules*, 77 Fed. Reg. 47,802 (Aug. 10, 2012), available at <https://www.acus.gov/recommendation/midnight-rules>.

The Administrative Procedure Act provides that you may postpone the effective date of an agency action pending judicial review where you find that justice so requires. See 5 U.S.C. § 705. If one of these rules is challenged in court before it becomes effective, you should consult with agency counsel regarding the appropriateness of relying on this provision to suspend the rule's effective date pending judicial review. In special cases, and only upon further consultation with agency counsel, the Department of Justice, and OIRA, you may consider the appropriateness of not defending a legally doubtful rule in the face of a judicial challenge.

Actions Related to the Federal Register and OIRA

Subject to any exceptions, please withdraw all rules, as defined in the Regulatory Freeze memorandum, that have been sent to the Office of the Federal Register (OFR) but have not yet been published. This will permit review of those rules as the Regulatory Freeze memorandum envisions.

Note that the OFR's specific requirements for the withdrawal of documents depend on whether those documents have been filed for public inspection. Some of those requirements are particularly time sensitive. Specifically, for those documents that have been filed for public inspection but are not published, Chapter 5.3 of the OFR's Document Drafting Handbook⁴ requires the following for withdrawals:

If we have filed the document for public inspection, your [Federal Register] Liaison Officer may withdraw it from publication only by emailing a pdf (preferred method) or faxing the signed letter requesting withdrawal.

In light of the Coronavirus Disease 2019 (COVID-19) Pandemic Public Health Emergency, agency designated OFR Liaison Officers or their approved alternates are strongly encouraged to e-mail, rather than fax, signed withdrawal letters to the OFR at fedreg.liaison@nara.gov. In addition:

The letter must reach the OFR before 12 noon on the business day before the document's scheduled publication date. We will not withdraw the document until we receive your letter.

Thus, if it has not already done so, your agency should submit withdrawal letters to the OFR as soon as possible. To facilitate such withdrawals, please see an example withdrawal letter in Appendix A: Model Letters of the OFR's Document Drafting Handbook. Please note that agencies may address requests for multiple documents in a single letter, as long as all are clearly identified by the Federal Register document number (if known), subject line, docket number, and RIN (if any).

⁴ See National Archives and Records Administration, Office of the Federal Register, Document Drafting Handbook (Revision 1.1, dated August 9, 2019), available at <https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf>.

In addition, subject to any exceptions and until such time as the agency head determines that it is appropriate for publication to resume, send no further rules to the OFR until an agency head appointed or designated by the President after noon on January 20, 2021, reviews and approves the rule. Also, consistent with the Regulatory Freeze memorandum's direction to comply with applicable Executive Orders (EOs) concerning regulatory management, please continue to follow the process outlined in EO 12866 to determine whether any such approved rule is significant and therefore subject to OIRA review.⁵

Finally, consistent with the Regulatory Freeze memorandum's broad scope, and to ensure that OIRA reviews only those rules that have already been reviewed by the appropriate person at each agency, I am requesting that your agency withdraw any rules that were submitted to OIRA prior to January 20, 2021.⁶

Agency Publication of Rules

The Regulatory Freeze memorandum contains a broad definition of rule, which may include regulatory actions or guidance documents not subject to a delay in effective date or publication in the Federal Register. Paying particular attention to significant rules,⁷ agencies should publish no further rules before an agency head appointed or designated by the President after noon on January 20, 2021 reviews and approves the publication and until such time as the agency head determines that it is appropriate for publication to resume. Consistent with the Regulatory Freeze memorandum's direction to comply with applicable Executive Orders concerning regulatory management, please continue to follow the process outlined in EO 12866 to determine whether any such approved rule is significant and therefore subject to OMB review.

Exceptions

There are some exceptions to the above directions.

First, the Regulatory Freeze memorandum authorizes OMB to make exceptions from the Regulatory Freeze memorandum's requirements under paragraphs 1-3 "for emergency situations or other urgent circumstances." This includes rules to address the continued health or economic consequences of COVID-19 Pandemic Public Health Emergency. Please bring any COVID-19 rules to the immediate attention of your OIRA desk officer.

Second, exclude from those actions any rules that are "subject to statutory or judicial deadlines." These are rules where performing the otherwise required review actions would endanger compliance with an operative statutory or judicial deadline. For example, agency civil monetary penalty adjustments that were due this month⁸ and were not

⁵ Executive Order 12866, § 6(a)(3)(B) & (C).

⁶ Your staff should reach out to OIRA staff to begin this process.

⁷ *Supra*, note 5.

⁸ See Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (amended

significant rules under EO 12866 likely fall within this exception.

For all non-COVID-19 rules, please contact your OIRA desk officer as soon as possible with a list of those rules as well as a brief explanation of your determination that provides the basis for the requested exception. OMB will review your justification promptly and provide further guidance.

Paperwork Reduction Act Review

OMB has a well-established process to review agency collections of information under the Paperwork Reduction Act (PRA), typically after publication of a notice or regulation in the Federal Register providing an opportunity for public comment. Your agency staff has, or may shortly, identify collections of information that are pending OMB review and approval and that you may also wish to review because they relate to rules being reviewed or otherwise raise substantial issues of law, fact, or policy. We request that your staff promptly bring any pending submissions that raise substantial questions of law, fact, or policy to the attention of your OIRA desk officer to ensure appropriate coordination.

Your agency staff may also identify collections of information for which approval would require timely publication of Federal Register notices soliciting public comment or notifying the public of revisions prior to OMB submission. Unintended delays in Federal Register publications and OMB submissions under the PRA may inhibit the process by which the public can provide feedback on pending collections of information and their potential impacts or, if approval lapses, agency information collection goals.

2015) (codified as amended at 28 U.S.C. § 2461 note).