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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407, and 457

[Docket ID FCIC–21–0008]

RIN 0563–AC76

General Administrative Regulations, Administrative Remedies for Non-Compliance; Area Risk Protection Insurance Regulations; Common Crop Insurance Policy, Basic Provisions; Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions; Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions; and Common Crop Insurance Regulations, Dry Bean Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is amending its regulations to revise organic terminology to be consistent with USDA's National Organic Program, provide cover crop relief for prevented planting situations, add flexibility to the prevented planting provisions, provide an option for rice producers to delay measurement of farm-stored production, allow enterprise units by type for sunflowers, add earlage and snaplage as an acceptable method of harvest for corn, clarify that in a loss situation when a producer changes their planned method of harvest they must notify insurance providers before harvest begins, and clarify enterprise and optional unit insurance choices for contract seed bean producers. The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021. For all other crops, the changes to the policy made in this rule are applicable for the 2023 and succeeding crop years.

DATES:

Effective date: This final rule is effective November 30, 2021.

Comment date: We will consider comments that we receive by the close of business January 31, 2022. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–21–0008. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency (RMA), US Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205. In your comment, specify docket ID FCIC–21–0008.
- Comments will be available for viewing online at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the Subpart R (7 CFR part 400), ARPI Basic Provisions (7 CFR part 407), CCIP Basic Provisions (7 CFR 457.8), Sunflower Seed Crop Provisions (7 CFR 457.108), Coarse Grains Crop Provisions (7 CFR 457.113); and Dry Bean Crop Provisions (7 CFR 457.150). The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021. For all other crops, the changes to the policy made in this rule are applicable for the 2023 and succeeding crop years.

Comments Related to 85 FR 38749–38760 Published June 29, 2020

The first final rule with request for comment was published in the **Federal Register** on June 29, 2020, (85 FR 38749–38760) amending the ARPI Regulations; CCIP Basic Provisions; and the Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions (Coarse Grains Crop Provisions). Comments were received from five commenters. Three comments were from individuals, whose comments were unrelated to the rule. One comment was from an insurance company. The last comment was from a trade association. FCIC addressed editorial comments in the final rule with request for comment published in the **Federal Register** on November 30, 2020, (85 FR 76420–76428). FCIC addressed the non-editorial public comments related to the ARPI Basic Provisions and CCIP Basic Provisions in a final rule with request for comment published in the **Federal Register** on June 30, 2021, (86 FR 34606–34611). The comments received regarding the June 29, 2020, final rule with request for comment regarding the Coarse Grains Crop Provisions and FCIC's responses are as follows:

Following Another Crop (FAC) and Not Following Another Crop (NFAC)

Comment: A commenter recommended replacing the term

''defined'' with ''specified'' in the definition of ''Following another crop (FAC)'' and ''Not following another crop (NFAC)'' Unless the Special Provisions actually contain ''definitions'' of the FAC and NFAC cropping practices (the same or different from these in the Crop Provisions?), it would be more accurate to change ''defined'' to ''specified.'' This phrasing is commonly used in policies and procedures.

Response: FCIC agrees and is replacing the term ''defined'' with ''specified'' in the definition of ''Following another crop (FAC)'' and ''Not following another crop (NFAC).''

Comment: A commenter recommended adding the phrase, ''in the same crop year'' at the end of the definition of ''Following another crop (FAC)'' and ''Not following another crop (NFAC)'' as a clarification. While the reference to ''. . . in the same crop year'' might not be strictly necessary, it might a helpful clarification. For example, if a 2021 crop year spring crop is planted in spring of 2021, followed by a 2022 crop year fall crop planted on the same acreage in fall 2021, that fall crop is not considered ''FAC'' because those are two different crop years even though in the same calendar year.

Response: The FAC and NFAC Special Provisions (SP) statements refer to calendar year and adding the reference to crop year in the Crop Provisions is conflicting and may cause even more confusion. No change will be made.

Earlage

Comment: A commenter stated that FCIC has expanded the term silage to include various usages such as earlage. It would provide clarity to either include reference to earlage, etc., usages in the definition of ''Silage'' or revise the definition of ''Harvest'' to state: ''Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage (including earlage, etc.), or fodder.''

Response: FCIC is revising the definition of ''harvest'' to include earlage and snaplage to treat earlage and snaplage consistent with grain, hay, or fodder.

Appraisals When Crop Is Harvested in a Manner Other Than Reported

Comment: A commenter suggested adding the bolded language in section 11(c), Duties in the Event of Damage or Loss: ''(c) If you will harvest any acreage in a manner other than as you reported it for coverage (*e.g.,* you reported planting it to harvest as grain but will harvest the acreage for silage, hay or fodder; or you reported planting it to harvest as silage but will harvest the acreage for grain), you must notify us before harvest begins so the acreage can be appraised as the type insured. Failure to timely provide notice will result in production to count determined in accordance with section 12(c)(1)(i)(E).''

Response: FCIC agrees and will clarify in section 11(c) that notice is required before harvest begins if a producer decides to harvest in a manner other than reported on their acreage report (such as harvesting grain as silage or vice versa) so the adjuster can appraise the acreage to determine production to count used for claim purposes.

Minor Editorial and Clarification Suggestions

Comment: A commenter noted in section 2, Unit Division, if the producer elects separate ''EC,'' enterprise units by cropping practice for both FAC and NFAC cropping practices but then does not qualify for EC on one of the cropping practices (and that is discovered on or before the acreage reporting date), the new option allows the insured to keep EC on the one that qualifies and have Basic Unit and/or Optional Unit on the other. With three options for unit structure in this situation, it is not necessary to have ''or'' at the end of 2(a)(4)(i)(A).

Response: FCIC agrees and is removing the ''or'' from the end of the phrase in section 2(a)(4)(i)(A).

Comment: A commenter noted in section 6(e), Insured Crop, that this provision states, in part, that ''. . . the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.'' [emphasis added]. Since the term ''beans'' is not included in the definition of ''harvest'' nor elsewhere in the provisions, the commenter suggested either changing ''beans'' to ''soybeans,'' or by adding a definition of ''beans'' in section 1 to provide useful clarity.

Response: FCIC agrees and is replacing the term ''beans'' with ''soybeans'' for clarity.

In addition to the changes described above, FCIC has made the following changes:

Subpart R

In the General Administrative Regulations Subpart R—Administrative Remedies for Non-Compliance, FCIC is revising the cap on civil fines to reference the maximum amount specified in 7 CFR 3.91(b)(7). Prior to this rule, the provisions list a fixed dollar amount of $10,000; however, this fine should be updated in accordance with 7 CFR 3.91(b)(7) which is routinely adjusted for inflation.

ARPI Basic Provisions and CCIP Basic Provisions

For both ARPI Basic Provisions (7 CFR part 407) and CCIP Basic Provisions (7 CFR 457.8), in section 1, FCIC is:

Revising the definitions of ''buffer zone,'' ''certified organic acreage,'' ''organic farming practice,'' and ''transitional acreage'' to be consistent with the National Organic Program definitions. This will ensure terms are clear, descriptive, and consistent across USDA.

Revising the definition of ''cover crop'' to add a reference to the Special Provisions. A Special Provisions statement prohibits corn from being considered a cover crop if it was planted on acreage that has been prevented from being planted. Potential abuse was reported for the 2019 crop year regarding corn being planted on the same acreage after a prevented planting payment has been made and claimed as a cover crop when the corn was not planted for conservation purposes but rather the benefit of corn cut for silage.

Adding a definition of ''NAP'' for Non-Insured Crop Disaster Assistance Program. The term is used more than once throughout the policy.

Revising the definition of ''Second crop'' to remove the reference to a cover crop covered by FSA's Noninsured Crop Disaster Assistance Program (NAP) because cover crops are not insurable under NAP.

Adding a definition of ''volunteer crop'' to define the term used in the policy and Crop Provisions. Throughout the policy the terms cover crop and volunteer crop are often in the same phrase. Cover crop is defined in the policy and it is appropriate to also define volunteer crop.

ARPI Basic Provisions

A change applicable only to the ARPI Basic Provisions (7 CFR part 407) is the removal of the Preamble language which references the crop year insurance is in effect. The crop year in effect for the crops covered under the ARPI Basic Provisions varies depending on the contract change date. The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021. For all other crops, the changes to the policy made in this rule are applicable for the 2023 and succeeding crop years. Therefore, FCIC is removing the sentence in the Preamble.

CCIP Basic Provisions

Other changes applicable only to the CCIP Basic Provisions (7 CFR 457.8) are:

Section 14, Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage, of the CCIP Basic Provisions, revise section 14(e)(1)(ii) to allow the option to delay measurement of farm-stored production (180-day extension) if allowed by the Special Provisions. Previously, the option was only allowed for grain crops. A Special Provisions statement will be created, and the extension will apply on a crop basis for crops that can easily and safely be stored and do not naturally deteriorate easily during farm storage, and therefore, are low risk for delaying measurements for loss adjustment.

Section 15, Production Included in Determining an Indemnity and Payment Reductions, discontinue reducing prevented planting payments on acreage that has been prevented from planting that is later cash rented. Prior to this rule, policy and procedure stated that if a producer receives cash rent for acreage that had been prevented from planting a first insured crop, the producer was limited to 35 percent of the prevented planting payment on the acreage regardless of the subsequent person's use of the rented acreage. With the removal of the November 1 date, as mentioned in the section 17 changes below, a producer with acreage claimed as prevented planting could plant a cover crop and hay, graze, or cut the cover crop for silage, haylage, or baleage without a reduction in their prevented planting payment. FCIC considers the benefits of using a cover crop as animal feed similar to the benefit of cash renting the acreage. Therefore, FCIC will no longer reduce prevented planting payments when acreage that has been prevented from planting is cash rented as long as it is not harvested for grain or seed.

Section 17, Prevented Planting, of the CCIP Basic Provisions, revise the policy provisions in response to a Prevented Planting Workgroup that included RMA and industry representatives. Prevented planting is a feature of many crop insurance plans that provides a partial payment to cover certain pre-plant costs for a crop that was prevented from being planted due to an insurable cause of loss. The workgroup reviewed the current policy related to cover crops, volunteer crops, discussed impacts to the prevented planting program, and explored policy improvements. The workgroup also reviewed the requirement that acreage must be physically available for planting to be eligible for a prevented planting payment (added November 30, 2020). The ''1 in 4'' requirement is a part of the requirement that the acreage must be physically available for planting. The ''1 in 4'' requirement states that the acreage must have been planted to a crop, insured, and harvested (or adjusted for a loss excluding flood, excess moisture, or drought or other cause of loss specified in the Special Provisions) in at least 1 out of the previous 4 crop years. The following lists the changes to section 17(f):

Incorporate RMA Manager's Bulletin MGR–21–004 by revising section 17(f)(5) to allow a cover crop planted on acreage claimed as prevented from being planted to be hayed, grazed, or cut for silage, haylage, or baleage at any time without a reduction to the prevented planting payment, provided the producer meets all other policy provisions. Prior to this rule, throughout FCIC-approved procedures for cover crops and prevented planting, November 1 is used as a reference point for when a cover crop may be hayed, grazed, or cut for silage, haylage, or baleage. For example, a cover crop planted after the late planting period for a crop that was prevented from being planted may be hayed, grazed, or cut for silage, haylage, or baleage on or after November 1, and the producer could still receive a full prevented planting payment. If the cover crop was hayed, grazed, or cut for silage, haylage, or baleage before November 1, or harvested for grain or seed at any time, the cover crop was considered a second crop and the producer's prevented planting payment was reduced by 65 percent.

As defined in the CCIP Basic Provisions, a cover crop is a crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement. FCIC rescinded the November 1 standard, as it relates to haying, grazing, or cutting for silage, haylage, or baleage of a cover crop from procedure for the 2021 and succeeding crop years. However, a cover crop harvested for grain or seed at any time will continue to result in a prevented planting payment reduction in accordance with section 15(f)(2) of the CCIP Basic Provisions. Similar revisions were made for language consistency regarding double cropping eligibility determination in section 15(g), Production Included in Determining an Indemnity and Payment Reductions, of the CCIP Basic Provisions.

Add language in section 17(f)(8) to incorporate RMA Manager's Bulletin MGR–21–002 which allows the annual regrowth for the crop year of an insured perennial Category B crop, such as alfalfa, red clover, or mint, to be considered planted when determining if the land is available for planting. In addition, the annual regrowth for the crop year of a perennial planted forage insured under Pasture, Rangeland, and Forage (PRF) reported with the intended use of haying is considered planted for the purpose of determining if the land is available for planting. Provided the land was planted (including the clarifications stated above), insured, and harvested (or adjusted for a loss excluding flood, excess moisture, or drought or other cause of loss specified in the Special Provisions) within the same crop year in 1 of the last 4 crop years, the land would meet the current prevented planting available for planting ''1 in 4'' requirement.

Add language in section 17(f)(8) to include another test to determine if the land was available for planting if it was not previously insured. If the land does not meet the current ''1 in 4'' requirement because crop insurance for a single crop or NAP coverage was not available, the land may qualify for prevented planting if the producer can prove the land was planted and harvested using good farming practices for the crop in at least 2 consecutive years out of the 4 previous crop years.

Add language in section 17(f)(8) that will allow changes to the eligible for planting language through the Special Provisions, for the ''1 in 4'' requirement.

Add language in section 17(f)(8) to allow for NAP coverage to qualify as ''insured'' for the ''1 in 4'' requirement.

Sunflower Seed Crop Provisions

Add a new section 2, Unit Division, to allow enterprise and optional units by type for sunflower seed. Allowing separate enterprise and optional units enables producers to be indemnified separately by type. The benefit for producers is that a gain on one type (*e.g.,* confectionery type) does not offset the loss payment on another type (*e.g.,* oil type). Enterprise units are attractive to producers because additional premium discounts are available as the risk is diversified across the county. Since FCIC is adding a new section 2, all subsequent sections and references to subsequent sections will be renumbered accordingly.

FCIC is also updating the example in redesignated section 12 to reflect current market prices for a more accurate portrayal of the prices that producers are experiencing.

Coarse Grains Crop Provisions

The Coarse Grains Crop Provisions were revised on June 29, 2020, with a final rule with request for comment. FCIC is making the following revisions in response to comments received:

Section 1, Definitions, of the Coarse Grains Crop Provisions, revise the definition of ''harvest'' to include earlage and snaplage as a harvested crop. FCIC received questions in the past to identify earlage and snaplage in the policy. Questions were raised in response to the 2020 Derecho on whether FCIC considers earlage as harvested. FCIC will revise the definition of ''harvest'' to include earlage and snaplage to treat earlage and snaplage consistent with grain, hay, or fodder. This change is in response to a comment made to the June 29, 2020, final rule.

Section 11, Duties in the Event of Damage or Loss, of the Coarse Grains Crop Provisions, revise section 11(c) to include ''hay or fodder'' to be consistent with the definition of ''harvest.'' FCIC is clarifying that notice is required before harvest begins if a producer decides to harvest in a manner other than reported on the producer's acreage report (such as harvesting grain for silage or vice versa) so the adjuster can appraise the acreage to determine production to count that is used for claim purposes. This change is in response to a comment made to the June 29, 2020, final rule.

Section 12(e)(2), Settlement of Claim, remove the word ''may'' and replace with ''will.'' Prior to this rule, the policy stated for silage appraisals made after the normal harvest period, the insurance companies ''may'' increase production to count to a 65 percent moisture equivalent. The word ''may'' is misleading because procedure requires this adjustment; there is no other option for increasing production to count in these situations. Changing the language to state, ''will'' is more transparent and consistent with existing FCIC issued procedures.

FCIC is also making non-substantive changes to the regulation. Examples include making stylistic changes, making grammatical corrections, updating prices, and clarifying word changes. These revisions are editorial in nature and are intended to provide clarity to the regulation.

Dry Bean Crop Provisions

The Dry Bean Crop Provisions were revised June 24, 2021, with a final rule with request for comment. FCIC is making the following clarifications in response to questions received after the close of the comment period about how to implement the new provisions.

Section 2, Unit Division, of the Dry Bean Crop Provisions, clarifies that a separate enterprise or optional unit for contract seed beans is allowed where contract seed beans are listed as an insurable type in the county actuarial documents. This clarifies a change issued as a Final Rule in June 2021, allowing separate enterprise units by type. Some dry bean varieties (*e.g.,* Pinto, Navy) are listed as insurable types but could also be produced under a contract as seed. This has caused confusion because ''Contract Seed Beans'' are also an insurable type in some counties. Insurance providers have questioned how to interpret the June Final Rule allowing separate enterprise units by type for these varieties.

FCIC will also be removing language in section 2 that restricts seed bean contracts based on both acreage and production from being eligible for a separate enterprise or optional unit. Many seed bean contracts include an estimated or typical yield that is in addition to actual production. These yields have often been included in seed bean contracts so the seed company can track production inventory estimates and help the grower with expected crop value when lending institutions are involved. The withdrawal of these combination style contracts from this section will avoid making them ineligible for optional or enterprise units and move the focus on whether the seed bean contracts meet the requirements stated in the Special Provisions.

FCIC is also making a grammatical change to the introductory text for subject-verb agreement.

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on the date of publication in the **Federal Register**. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As

specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450—Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563–0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

List of Subjects

7 CFR Part 400

Acreage allotments, Administrative practice and procedure, Claims, Crop insurance, Drug traffic control, Fraud, Government employees, Income taxes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Wages.

7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR parts 400, 407, and 457, effective for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021, and for the 2023 and succeeding crop years for all other crops, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o), and 7 U.S.C. 1515(h).

■ 2. Amend § 400.545 by revising paragraph (f)(2) to read as follows:

§ 400.454 Disqualification and civil fines.

* * * * *

(f) * * *

(2) The amount of such civil fine shall not exceed the maximum amount specified in 7 CFR 3.91 (b)(7).

* * * * *

PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS

■ 3. The authority citation for part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 4. Amend § 407.9 as follows:
■ a. In the introductory text, remove the sentence ''This insurance is available for the 2022 and succeeding years.'';
■ b. In section 1:
■ i. Revise the definitions of ''buffer zone'', ''certified organic acreage'', and ''cover crop'';
■ ii. Add a definition for ''NAP'' in alphabetical order;
■ iii. Revise the definitions of ''organic farming practice'', ''second crop'', and ''transitional acreage''; and
■ iv. Add a definition for ''volunteer crop'' in alphabetical order.

The revisions and additions read as follows:

§ 407.9 Area risk protection insurance policy.

* * * * *

1. Definitions

* * * * *

Buffer zone. Acreage designated in your organic plan that separates agricultural commodities grown under organic farming practices from those grown under non-organic farming practices. A buffer zone must be sufficient in size or other features, as stated in the National Organic Program published in 7 CFR part 205, to prevent or minimize the possibility of unintended contact by prohibited substances or organisms applied to adjacent land acres with an area that is part of the certified organic farming operation.

* * * * *

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) and 7 CFR part 205.

* * * * *

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement, unless otherwise specified in the Special Provisions. A cover crop may be considered a second crop (see the definition of ''second crop'').

* * * * *

NAP. Noninsured Crop Disaster Assistance Program published in 7 CFR part 1437, administered by FSA.

* * * * *

Organic farming practice. A system of plant production practices used on organic acreage and transitional acreage to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop that is planted on the same acreage and harvested for grain or seed, is considered a second crop. A crop that is covered by NAP or receives other USDA benefits associated with forage crops is considered a second crop. A crop meeting the conditions in this definition is considered a second crop regardless of whether it is insured.

* * * * *

Transitional acreage. Acreage in transition to organic where organic farming practices are being followed, but the acreage does not yet qualify as certified organic acreage.

* * * * *

Volunteer crop. A crop that was planted in a previous crop year on the applicable acreage or drifted from other acreage, successfully self-seeded, and is growing this crop year on the applicable acreage without being intentionally sown or managed.

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 5. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 6. Amend § 457.8 in the ''Common Crop Insurance Policy'' as follows:
■ a. In section 1:
■ i. Revise the definitions of ''buffer zone'', ''certified organic acreage'', and ''cover crop'';
■ ii. Add a definition for ''NAP'' in alphabetical order;
■ iii. Revise the definitions of ''organic farming practice'', ''second crop'', and ''transitional acreage''; and
■ iv. Add a definition for ''volunteer crop'' in alphabetical order.
■ b. In section 14, revise paragraph (e)(1)(ii) introductory text;
■ c. In section 15, revise paragraph (g)(3);
■ d. In section 17:
■ i. In paragraph (f)(5)(i)(C), remove the word ''or'' at the end;
■ ii. Revise paragraphs (f)(5)(ii) and (iii);
■ iii. Add paragraph (f)(5)(iv);
■ iv. In paragraph (f)(8) introductory text, remove the semicolon at the end of the paragraph and add a period in its place;
■ v. Revise paragraphs (f)(8)(i)(E) and (f)(8)(ii); and
■ vi. Add paragraph (f)(8)(iii);

The revisions and additions read as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. Definitions

* * * * *

Buffer zone. Acreage designated in your organic plan that separates agricultural commodities grown under organic farming practices from those grown under non-organic farming practices. A buffer zone must be sufficient in size or other features, as stated in the National Organic Program published in 7 CFR part 205, to prevent or minimize the possibility of unintended contact by prohibited substances or organisms applied to adjacent land acres with an area that is part of the certified organic farming operation.

* * * * *

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) and 7 CFR part 205.

* * * * *

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement, unless otherwise specified in the Special Provisions. A cover crop may be considered a second crop (see the definition of ''second crop'').

* * * * *

NAP. Noninsured Crop Disaster Assistance Program published in 7 CFR part 1437, administered by FSA.

* * * * *

Organic farming practice. A system of plant production practices used on

organic acreage and transitional acreage to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop that is planted on the same acreage and harvested for grain or seed is considered a second crop. A crop that is covered by NAP or receives other USDA benefits associated with forage crops is considered a second crop. A crop meeting the conditions stated in this definition is considered a second crop regardless of whether it is insured.

* * * * *

Transitional acreage. Acreage in transition to organic where organic farming practices are being followed, but the acreage does not yet qualify as certified organic acreage.

* * * * *

Volunteer crop. A crop that was planted in a previous crop year on the applicable acreage or drifted from other acreage, successfully self-seeded, and is growing this crop year on the applicable acreage without being intentionally sown or managed.

* * * * *

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage

* * * * *

(e) * * *

(1) * * *

(ii) Have harvested farm-stored production and elect, in writing, to delay measurement of your farm-stored production and settlement of any potential associated claim for indemnity as allowed by the Special Provisions (Extensions will be granted for this purpose up to 180 days after the end of the insurance period).

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions

* * * * *

(g) * * *

(3) To a prevented planting payment if a cover crop that is planted after the late planting period (or after the final planting date if a late planting period is not applicable) is harvested for grain or seed by you or another person, at any time.

* * * * *

17. Prevented Planting

* * * * *

(f) * * *

(5) * * *

(ii) Any volunteer crop is harvested for grain or seed at any time;

(iii) The act of haying, grazing, or cutting for silage, haylage, or baleage a cover crop or volunteer crop contributed to the acreage being prevented from being planted;

(iv) A cover crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable and is harvested for grain or seed at any time.

* * * * *

(8) * * *

(i) * * *

(E) Unless otherwise allowed in the Special Provisions, in at least 1 of the 4 most recent crop years immediately preceding the current crop year, have been planted to a crop (planted includes annual regrowth of a perennial forage or mint crop):

(*1*) Using recognized good farming practices;

(*2*) Insured under the authority of the Act or NAP; and

(*3*) That was harvested, or if not harvested, was adjusted for claim purposes under the authority of the Act or NAP due to an insured cause of loss (other than a cause of loss related to flood, excess moisture, drought, or other cause of loss specified in the Special Provisions).

(ii) If you do not meet the requirements of section 17(f)(8)(i)(E) because a crop specific plan of insurance offered under the authority of the Act or NAP was not available for the crops planted on the acreage in the 4 most recent crop years, the acreage may be considered physically available for planting if you can prove the acreage was planted and harvested using good farming practices in at least 2 consecutive years out of the 4 most recent crop years immediately preceding the current crop year.

(iii) Once any acreage does not satisfy the requirements in section 17(f)(8)(i)(E) or 17(f)(8)(ii), such acreage will be considered physically unavailable for planting until the acreage has been planted to a crop in accordance with 17(f)(8)(i)(E) for 2 consecutive crop years, or until such acreage meets the requirements of 17(f)(8)(ii).

* * * * *

■ 7. Amend § 457.108 as follows:

■ a. In the introductory text, remove the year ''2021'' and add ''2022'' in its place;

■ b. Redesignate sections 2 through 12 as sections 3 through 13;

■ c. Add a new section 2;

■ d. In newly redesignated section 9, in paragraph (h), remove the phrase ''sections 8(a) through (g)'' and add the phrase ''sections 9(a) through (g)'' in its place;

■ e. In newly redesignated section 10, in paragraph (a)(2), remove the phrase ''section 9(a)(1)'' and add the phrase ''section 10(a)(1)'' in its place; and

■ f. In newly redesignated section 12:

■ i. In paragraph (b)(2), remove the phrase ''section 11(b)(1)(i) or 11(b)(1)(ii)'' and add the phrase ''section 12(b)(1)(i) or 12(b)(1)(ii)'' in its place;

■ ii. In paragraph (b)(4), remove the phrase ''section 11(b)(3)(i) or 11(b)(3)(ii)'' and add the phrase ''section 12(b)(3)(i) or 12(b)(3)(ii)'' in its place;

■ iii. In paragraph (b)(5), remove the phrase ''section 11(b)(4) from the result of section 11(b)(2)'' and add the phrase ''section 12(b)(4) from the result of section 12(b)(2)'' in its place;

■ iv. In paragraph (b)(6), remove the phrase ''section 11(b)(5)'' and add the phrase ''section 12(b)(5)'' in its place;

■ v. Revise the example immediately following paragraph (b)(6);

■ vi. In paragraph (c)(1)(iii), remove the phrase ''subsection 11(d)'' and add the phrase ''section 12(d)'' in its place; and

■ vii. In paragraph (d)(4), remove the phrase ''sections 11(d)(2) and (3)'' and add the phrase ''sections 12(d)(2) and (3)'' in its place.

The revisions and additions reads as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

2. Unit Division

(a) In addition to the requirements of section 34(a) of the Basic Provisions, you may elect separate enterprise units for confectionery or oil types if these types are allowed by the actuarial documents. If you elect enterprise units for these types, you may not elect enterprise or optional units by irrigation practices.

(1) You may elect one enterprise unit for the confectionery type or one enterprise unit for the oil type, or separate enterprise units for both types, unless otherwise specified in the Special Provisions. For example: You may choose one enterprise unit for the confectionery type acreage and basic or optional units for the oil type acreage.

(2) You must separately meet the requirements in section 34(a)(4) for each enterprise unit.

(3) If you elected separate enterprise units for both types and we discover you do not qualify for an enterprise unit for one or the other type and such discovery is made:

(i) On or before the acreage reporting date, you may elect to insure:

(A) One enterprise unit for the confectionery type or oil type provided you meet the requirements in section 34(a)(4), and basic or optional units for the other type, whichever you report on your acreage report and qualify for;

(B) One enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4); or

(C) Basic or optional units for all acreage of the crop in the county, whichever you report on your acreage report and qualify for; or

(ii) At any time after the acreage reporting date, your unit structure will be one enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure.

(4) If you elected an enterprise unit for one type and a different unit structure on the other type and we discover you do not qualify for an enterprise unit for the type and such discovery is made:

(i) On or before the acreage reporting date, your unit division will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(ii) At any time after the acreage reporting date, we will assign the basic unit structure.

(b) In addition to, or instead of, establishing optional units as provided in section 34(c) in the Basic Provisions, a separate optional unit may be established for each sunflower type (designated in the actuarial documents and including any type insured by written agreement).

* * * * *

12. Settlement of Claim

* * * * *

(b) * * *

For example:

You have 100 percent share in 50 acres of sunflowers in the unit with a production guarantee (per acre) of 1,250 pounds, your projected price is $.23, your harvest price is $.24, and your production to count is 54,000 pounds.

If you elected yield protection:

(1) 50 acres × (1,250 pound production guarantee × $.23 projected price) = $14,375.00 value of the production guarantee;

(3) 54,000 pound production to count × $.23 projected price = $12,420.00 value of production to count;

(5) $14,375.00 − $12,420.00 = $1,955.00;

(6) $1,955.00 × 1.000 share = $1,955.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (1,250 pound production guarantee × $.24 harvest price) = $15,000.00 revenue protection guarantee;

(3) 54,000 pound production to count × $.24 harvest price = $12,960.00 value of the production to count;

(5) $15,000.00 − $12,960.00 = $2,040.00;

(6) $2,040.00 × 1.000 share = $2,040.00 indemnity.

* * * * *

■ 8. Amend § 457.113 as follows:

■ a. In the introductory text, remove the year ''2021'' and add ''2022'' in its place;

■ b. In section 1:

■ i. In the definition of ''Following another crop (FAC)'', remove ''defined'' and add ''specified'' in its place;

■ ii. Revise the definition of ''Harvest'';

■ iii. In the definition of ''Not following another crop (NFAC)'', remove ''defined'' and add ''specified'' in its place;

■ c. In section 2, in paragraph (a)(4)(i)(A), remove the word ''or'' at the end;

■ d. In section 6:

■ i. In paragraph (b)(1), remove the phrase ''twenty percent (20%)'' and add ''20 percent'' in its place;

■ ii. Revise paragraph (b)(2)(i);

■ iii. In paragraph (e), remove the word ''beans'' and add ''soybeans'' in its place;

■ e. In section 11, revise paragraph (c); and

■ f. In section 12:

■ i. Revise the example immediately following paragraph (b)(6);

■ ii. In paragraph (c)(1)(iv)(A), remove the phrase ''production to count); or'' and add ''production to count.); or'' in its place;

■ iii. Revise paragraph (d)(1);

■ iv. In paragraph (d)(4), remove the phrase ''contained in'' and add ''calculated in accordance with'' in its place;

■ v. In paragraph (e)(1), remove ''(1/10)'' after ''0.1''; and

■ vi. In paragraph (e)(2), remove ''may'' and add ''will'' in its place.

The revisions read as follows:

§ 457.113 Coarse grains crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Harvest. Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage, earlage, snaplage, or fodder.

* * * * *

6. Insured Crop

* * * * *

(b) * * *

(2) * * *

(i) High-amylose, high-oil, or high-protein (except as authorized in section 6(b)(2)), flint, flour, Indian, blue corn, a variety genetically adapted to provide forage for wildlife, or any other open pollinated corn, unless the Special Provisions or a written agreement allows insurance of such excluded crops.

* * * * *

11. Duties in the Event of Damage or Loss

* * * * *

(c) If you will harvest any acreage in a manner other than as you reported on your acreage report (*e.g.,* you reported planting it to harvest as grain but will harvest the acreage for hay, silage, earlage, snaplage, or fodder, or you reported planting it to harvest as silage but will harvest the acreage for grain, hay, earlage, snaplage, or fodder), you must notify us before harvest begins so the acreage can be appraised as the type reported on your acreage report to determine production to count that is used for claim purposes. Failure to timely provide notice will result in production to count determined in accordance with section 12(c)(1)(i)(E).

* * * * *

12. Settlement of Claim

* * * * *

(b) * * *

(6) * * *

For example:

You have 100 percent share in 50 acres of corn in the unit with a production guarantee (per acre) of 115 bushels, your projected price is $4.58, your harvest price is $4.53, and your production to count is 5,000 bushels.

If you elected yield protection:

(1) 50 acres × (115 bushel production guarantee × $4.58 projected price) = $26,335.00 value of the production guarantee

(3) 5,000 bushel production to count × $4.58 projected price = $22,900.00 value of the production to count

(5) $26,335.00 − $22,900.00 = $3,435.00

(6) $3,435.00 × 1.000 share = $3,435.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (115 bushel production guarantee × $4.58 projected price) = $26,335.00 revenue protection guarantee

(3) 5,000 bushel production to count × $4.53 harvest price = $22,650.00 value of the production to count

(5) $26,335.00 − $22,650.00 = $3,685.00

(6) $3,685.00 × 1.000 share = $3,685.00 indemnity.

* * * * *

(d) * * *

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) 15 percent for corn (If moisture exceeds 30 percent, production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent);

(ii) 14 percent for grain sorghum; and

(iii) 13 percent for soybeans.

We may obtain samples of the production to determine the moisture content.

* * * * *

■ 9. Amend § 457.150 as follows:

■ a. In the introductory text, remove the word ''follow'' and add ''follows:'' in its place; and

■ b. In section 2, revise paragraph (d).

The revision reads as follows:

§ 457.150 Dry bean crop insurance provisions.

* * * * *

2. Unit Division

* * * * *

(d) Contract seed beans may qualify for a separate enterprise or optional unit only if the seed bean processor contract specifies the number of acres under contract and contract seed beans are listed as a separate type in the actuarial documents. Contract seed beans produced under a seed bean processor contract that specifies only an amount of production are not eligible for a separate enterprise or optional unit.

* * * * *

Richard H. Flournoy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2021–25925 Filed 11–29–21; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2021–0169]

RIN 3150–AK70

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include correcting a grammatical error, punctuation, a reference, formatting, a mathematical formula, and spelling; clarifying language; revising contact information; and updating an authority citation and internal procedures. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

DATES: This final rule is effective on December 30, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0169 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–2021–0169. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Angella Love Blair, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3453, email: *Angella.LoveBlair@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in parts 9, 37, 40, 50, 51, 52, 55, 71, 73, and 110 of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC is making these amendments to correct a grammatical error, punctuation, a reference, formatting, a mathematical formula, and spelling; clarify language; revise contact information; and update an authority citation and internal procedures.

II. Summary of Changes

10 CFR Part 9

Update Authority Citation. This final rule updates the authority citation for 10 CFR part 9 to include the reference for the Social Security Number Fraud Prevention Act of 2017.

10 CFR Parts 37 and 110

Correct Mathematical Formula. This final rule revises appendix A to 10 CFR part 37 and appendix P to 10 CFR part 110 to correct a sum of fractions formula. The correction is necessary to make the expression mathematically reflect that an indefinite number of nuclides may be included in the calculation, consistent with the explanations in the respective rule texts. An ellipsis and a plus sign are added at the appropriate locations, and the summation sign (sigma) and brackets are deleted as unnecessary.

10 CFR Parts 40 and 73

Update Internal Procedures. This final rule revises §§ 40.23(b)(1), 40.66(a), 40.67(a), 73.73(a)(1), and 73.74(a)(1) to add the email address that has been used for submitting advance notices for shipments of radioactive material.

10 CFR Part 50

Revise Contact Information. This final rule amends the introductory text of § 50.74 to refer licensees to the appropriate contact information in § 55.5.

Provide Clarity. This final rule revises section IV.F.2.j of appendix E to 10 CFR part 50 to clarify the emergency preparedness exercise scenarios that must be performed within an 8-year exercise cycle. This revision does not change the regulations; it only clarifies the regulations by adding paragraph numbers and organization.

10 CFR Part 51

Correct Spelling. This final rule amends footnote 4 to § 51.52 to correct ''appiled'' to read ''applied.'' This final rule also amends § 51.10(b)(2) to correct ''acitivity'' to read ''activity.''

10 CFR Part 52

Correct Reference. This final rule amends § 52.136 by removing the reference ''10 CFR 50.33(a) through (d) and (j)'' and adding in its place the

reference ''10 CFR 50.33(a) through (c) and (j).''

10 CFR Part 55

Correct Punctation. This final rule amends § 55.33(a)(1) to correct the word ''applicants'' to read ''applicant's.''

10 CFR Part 71

Correct a Formatting Error. This final rule corrects § 71.4 to italicize the term *licensed material.*

10 CFR Part 110

Correct Grammatical Error. This final rule amends the definition for *medical isotope* in § 110.2 to correct the phrase ''radiopharmaceutical for diagnostic, therapeutic procedures or for research and development'' to read ''radiopharmaceutical for diagnostic or therapeutic procedures or for research and development.''

III. Rulemaking Procedure

Under section 553(b) of the Administrative Procedure Act (5 U.S.C.553(b)), an agency may waive publication in the **Federal Register** of a notice of proposed rulemaking and opportunity for comment requirements if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on these amendments, because notice and opportunity for comment is unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR sections or are related only to management, organization, procedure, and practice. Specifically, the revisions correct a grammatical error, punctuation, a reference, formatting, a mathematical formula, and spelling; clarify language; revise contact information; and update an authority citation and internal procedures. The Commission is exercising its authority under 5 U.S.C.553(b) to publish these amendments as a final rule. The amendments are effective December 30, 2021. These amendments do not require action by any person or entity regulated by the NRC and do not change the substantive responsibilities of any person or entity regulated by the NRC.

IV. Backfitting and Issue Finality

The NRC has determined that the corrections in this final rule would not constitute backfitting as defined in § 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests.'' These corrections also would not constitute forward fitting as that term is defined and described in MD 8.4 or affect the issue finality of any approval issued under 10 CFR part 52. The amendments are non-substantive in nature, including correcting a grammatical error, punctuation, a reference, formatting, a mathematical formula, and spelling; clarifying language; revising contact information; and updating an authority citation and internal procedures. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or that would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of this final rule would not constitute backfitting or be inconsistent with any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this correction rulemaking addressing backfitting or issue finality.

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VI. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in § 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

VII. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

VIII. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

IX. Compatibility of Agreement State Regulations

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC, or adequacy category Health and Safety (H&S). Compatibility Category A program elements are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B program elements are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C program elements are those program elements that do not meet the criteria of Category A or B, but contain the essential objectives that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D program elements are those program elements that do not meet any of the criteria of Category A, B, or C and, therefore, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC program elements are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of 10 CFR. These program elements should not be adopted by the Agreement States. Compatibility Category H&S program elements are program elements that are required because of a particular health and safety role in the regulation of agreement material within the State and should be adopted in a manner that embodies the essential objectives of the NRC program. The portions of this final rule that amend 10 CFR parts 37, 40, and 71 are a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among

Agreement State and NRC requirements, and are listed in the following table. The changes to 10 CFR parts 9, 50, 51, 52, 55, 73, and 110 categories are not subject to Agreement State jurisdiction and consequently are not required for compatibility.

COMPATIBILITY TABLE

Section	Change	Subject	Compatibility	
			Existing	New
Part 37				
Appendix A to Part 37	Amend	Category 1 and Category 2 Radioactive Materials	B	B
Part 40				
§ 40.23	Amend	General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue.	NRC	NRC
§ 40.66	Amend	Requirements for advance notice of export shipments of natural uranium.	NRC	NRC
§ 40.67	Amend	Requirement for advance notice of importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material.	NRC	NRC
Part 71				
§ 71.4	Amend	Definitions (Licensed material)	D	D

List of Subjects

10 CFR Part 9

Administrative practice and procedure, Courts, Criminal penalties, Freedom of information, Government employees, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 37

Byproduct material, Criminal penalties, Exports, Hazardous materials transportation, Imports, Licensed material, Nuclear materials, Penalties, Radioactive materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 40

Criminal penalties, Exports, Government contracts, Hazardous materials transportation, Hazardous waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Source material, Uranium, Whistleblowing.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Issue finality, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Incorporation by reference, Intergovernmental relations, Nuclear materials, Packaging and containers, Penalties, Radioactive materials, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Incorporation by reference, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR chapter I:

PART 9—PUBLIC RECORDS

■ 1. The authority citation for part 9 is revised to read as follows:

Authority: Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

Subpart A also issued under 31 U.S.C. 9701.

Subpart B also issued under 5 U.S.C. 552a.

Subpart C also issued under 5 U.S.C. 552b.

Subpart E also issued under 42 U.S.C. 405 note.

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

■ 2. The authority citation for part 37 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234, 274 (42 U.S.C. 2014, 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

■ 3. In appendix A to part 37, revise the mathematical formula to read as follows:

Appendix A to Part 37—Category 1 and Category 2 Radioactive Materials

* * * * *

$$\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \cdots + \frac{R_n}{AR_n} \geq 1.0$$

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 187, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

■ 5. In § 40.23, revise paragraph (b)(1) to read as follows:

§ 40.23 General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue.

* * * * *

(b) * * *

(1) Persons generally licensed under paragraph (a) of this section, who plan to carry a transient shipment with scheduled stops at a United States port, shall notify the Director Office of Nuclear Security and Incident Response, by email (preferred method) to *AdvanceNotifications.Resource@nrc.gov* or using an appropriate method listed in § 40.5. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

* * * * *

■ 6. In § 40.66:

■ a. Revise paragraph (a); and

■ b. Remove the undesignated paragraph following paragraph (a).

The revision reads as follows:

§ 40.66 Requirements for advance notice of export shipments of natural uranium.

(a) Each licensee authorized to export natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, shall notify the Director, Office of Nuclear Security and Incident Response, by email (preferred method) to *AdvanceNotifications.Resource@nrc.gov* or by an appropriate method listed in § 40.5. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

* * * * *

■ 7. In § 40.67, revise paragraph (a) to read as follows:

§ 40.67 Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material.

(a) Each licensee authorized to import natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, from countries not party to the Convention on the Physical Protection of Nuclear Material (see appendix F to part 73 of this chapter) shall notify the Director, Office of Nuclear Security and Incident Response, by email (preferred method) to *AdvanceNotifications.Resource@nrc.gov* or using an appropriate method listed in § 40.5. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 9. In § 50.74, revise the introductory text to read as follows:

§ 50.74 Notification of change in operator or senior operator status.

Each licensee shall notify the appropriate NRC contact, as described in § 55.5 of this chapter, within 30 days of the following in regard to a licensed operator or senior operator:

* * * * *

■ 10. In appendix E to part 50, revise paragraph 2.j of section IV.F to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

IV. * * *

F. * * *

2. * * *

j. (i) The exercises conducted under paragraph 2 of this section by nuclear power reactor licensees must provide the opportunity for the ERO to demonstrate proficiency in the key skills necessary to implement the principal functional areas of emergency response identified in paragraph 2.b of this section.

(ii) Each exercise must provide the opportunity for the ERO to demonstrate key skills specific to emergency response duties in the control room, TSC, OSC, EOF, and joint information center.

(iii) In each 8-calendar-year exercise cycle, nuclear power reactor licensees shall vary the content of scenarios during exercises conducted under paragraph 2 of this section to provide the opportunity for the ERO to demonstrate proficiency in the key skills necessary to respond to the following scenario elements:

(1) Hostile action directed at the plant site;

(2) No radiological release or an unplanned minimal radiological release that does not require public protective actions;

(3) An initial classification of, or rapid escalation to, a Site Area Emergency or General Emergency;

(4) Implementation of strategies, procedures, and guidance under § 50.155(b)(2); and

(5) Integration of offsite resources with onsite response.

(iv) The licensee shall maintain a record of exercises conducted during each 8-year exercise cycle that documents the content of scenarios used to comply with the requirements of section IV.F.2.j of this appendix.

(v) Each licensee shall conduct a hostile action exercise for each of its sites no later than December 31, 2015.

(vi) The first 8-year exercise cycle for a site will begin in the calendar year in which the first hostile action exercise is conducted. For a site licensed under 10 CFR part 52, the first 8-year exercise cycle begins in the calendar year of the initial exercise required by section IV.F.2.a of this appendix.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 11. The authority citation for part 51 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy

Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

§ 51.10 [Amended]

■ 12. In § 51.10, amend paragraph (b)(2) by removing ''acitivity'' and adding in its place ''activity''.

§ 51.52 [Amended]

■ 13. In § 51.52, amend footnote 4 by removing ''appiled'' and adding in its place ''applied''.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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

Authority: Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

§ 52.136 [Amended]

■ 15. In § 52.136, remove the reference ''10 CFR 50.33(a) through (d) and (j)'' and add in its place the reference ''10 CFR 50.33(a) through (c) and (j)''.

PART 55—OPERATORS' LICENSES

■ 16. The authority citation for part 55 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 107, 161, 181, 182, 183, 186, 187, 223, 234 (42 U.S.C. 2137, 2201, 2231, 2232, 2233, 2236, 2237, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); 44 U.S.C. 3504 note.

§ 55.33 [Amended]

■ 17. In § 55.33, amend paragraph (a)(1) by removing ''applicants'' and adding in its place ''applicant's''.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 180 (42 U.S.C. 10175); 44 U.S.C. 3504 note.

Section 71.97 also issued under Sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

§ 71.4 [Amended]

■ 19. In § 71.4, remove ''*Licensed* material'' and add in its place the term ''*Licensed material*''.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 20. The authority citation for part 73 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 21. In § 73.73, revise paragraph (a)(1) to read as follows:

§ 73.73 Requirement for advance notice and protection of export shipments of special nuclear material of low strategic significance.

(a) * * *

(1) Notify in writing the Director, Office of Nuclear Security and Incident Response, by email (preferred method) to *AdvanceNotifications.Resource@nrc.gov* or by using any appropriate method listed in § 73.4;

* * * * *

■ 22. In § 73.74, revise paragraph (a)(1) to read as follows:

§ 73.74 Requirement for advance notice and protection of import shipments of nuclear material from countries that are not party to the Convention on the Physical Protection of Nuclear Material.

(a) * * *

(1) Notify in writing the Director, Office of Nuclear Security and Incident Response, by email (preferred method) to *AdvanceNotifications.Resource@nrc.gov* or by using any appropriate method listed in § 73.4;

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 23. The authority citation for part 110 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170H, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 2160d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

■ 24. In § 110.2, amend the definition for *Medical isotope* by removing the phrase ''radiopharmaceutical for diagnostic, therapeutic procedures or for research and development'' and adding in its place the phrase ''radiopharmaceutical for diagnostic or therapeutic procedures or for research and development.''

■ 25. In appendix P to part 110, revise the mathematical formula to read as follows:

Appendix P to Part 110—Category 1 and 2 Radioactive Material

* * * * *

$$\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \cdots + \frac{R_n}{AR_n} \geq 1.0$$

Dated: November 3, 2021.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–24472 Filed 11–29–21; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2021–0019]

RIN 1557–AF13

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1758]

RIN 7100–AG21

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve

System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The OCC, the Board, and the Bureau are finalizing amendments to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk mortgages,'' termed ''higher-priced mortgage loans'' or ''HPMLs'' in the agencies' regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) jointly issued final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the CPI–W in effect as of June 1, 2021, the exemption threshold will increase from $27,200 to $28,500, effective January 1, 2022.

DATES: This final rule is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: *OCC:* MaryAnn Nash, Counsel, Chief Counsel's Office, (202) 649–6287; for persons who are deaf or hard of hearing TTY, (202) 649–5597. *Board:* Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. *Bureau:* Lanique Eubanks, Senior Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended TILA to add special appraisal requirements for ''higher-risk mortgages.'' [1] In January 2013, the Agencies jointly issued a final rule implementing these requirements and adopted the term ''higher-priced mortgage loan'' (HPML) instead of ''higher-risk mortgage'' (the January 2013 Final Rule).[2] In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule.[3] In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).[4] Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of $25,000 or less, to be adjusted annually for inflation.

The OCC's, Board's, and Bureau's versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.[5]

The OCC's, Board's, and Bureau's regulations,[6] and their accompanying interpretations,[7] provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust the threshold amounts from the prior year.[8]

On November 30, 2016, the OCC, the Board, and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that the values for the exemption threshold keep pace with the CPI–W (HPML Small Dollar Adjustment Calculation Rule).[9] The HPML Small Dollar Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the OCC, Board, and Bureau will not adjust the exemption threshold from the prior year. The HPML Small Dollar Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2022 Adjustment and Commentary Revision

Effective January 1, 2022, the exemption threshold amount is increased from $27,200 to $28,500. This amount is based on the CPI–W in effect on June 1, 2021, which was reported on May 12, 2021 (based on April 2021 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban

[1] Public Law 111–203, section 1471, 124 Stat. 1376, 2185–87 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

[2] 78 FR 10368 (Feb. 13, 2013).

[3] 78 FR 48548 (Aug. 8, 2013).

[4] 78 FR 78520 (Dec. 26, 2013).

[5] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the Bureau's version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the Bureau's version. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[6] 12 CFR 34.203(b)(2) (OCC); 12 CFR 226.43(b)(2) (Board); and 12 CFR 1026.35(c)(2)(ii) (Bureau).

[7] 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 (Bureau).

[8] *See* 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 and –2 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 and –2 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 and –2 (Bureau).

[9] *See* 81 FR 86250 (Nov. 30, 2016).

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month, but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2021 were reported on May 12, 2021, and reflect economic conditions in April 2021.

consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 12, 2021, reflects a 4.7 percent increase in the CPI–W from April 2020 to April 2021. Accordingly, the 4.7 percent increase in the CPI–W from April 2020 to April 2021 results in an exemption threshold amount of $28,500, after rounding. The OCC, the Board, and the Bureau are revising the commentaries to their respective regulations to add new comments as follows:

- Comment 203(b)(2)–3.ix to 12 CFR part 34, Appendix C to Subpart G (OCC);
- Comment 43(b)(2)–3.ix to Supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)–3.ix to Supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2022, through December 31, 2022, the threshold amount is $28,500. These revisions are effective January 1, 2022.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously memorialized in the December 2013 Supplemental Final Rule and the HPML Small Dollar Adjustment Calculation Rule. For these reasons, the OCC, the Board, and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[13] the Agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Unfunded Mandates Reform Act

The OCC analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating a final rule for which a general notice of proposed rulemaking was published.[14] As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Bureau Signing Authority

The Associate Director of Research, Markets, and Regulations, Janis K. Pappalardo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

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

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. In Appendix C to Subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans,* paragraph 34.203(b)(2) is revised to read as follows:

Appendix C to Subpart G—OCC Interpretations

* * * * *

Section 34.203—Appraisals for Higher-Priced Mortgage Loans

* * * * *

Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 203(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

[14] 2 U.S.C. 1532.

current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 34.203 applies. *See* § 34.203(b) and (d)(7).

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans,* paragraph 43(b)(2) is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Section 226.43—Appraisals for Higher—Risk Mortgage Loans

* * * * *

Paragraph 43(b)(2)

1. *Threshold amount.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 43(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. *See* § 226.43(b) and (d)(7).

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 5. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans,* paragraph 35(c)(2)(ii) is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. *See* § 1026.35(c)(2) and (c)(4)(vii).

* * * * *

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann Misback,

Secretary of the Board.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–25908 Filed 11–29–21; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1756]

RIN 7100–AG19

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1013

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are finalizing amendments to the official interpretations and commentary for the agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Under regulations adopted by the Board and the Bureau, if there is no annual percentage increase in the CPI–W, the Board and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2021, the exemption threshold will increase from $58,300 to $61,000 effective January 1, 2022. Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Board and the Bureau are making similar amendments to each of their respective regulations implementing the Truth in Lending Act elsewhere in the Rules section of this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors

of the Federal Reserve System, at (202) 452–3667.

Bureau: Lanique Eubanks, Senior Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in the CLA for exempt consumer leases, and the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,[1] from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation Z (which implements TILA) (collectively, the Board Final Threshold Rules).[3]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation M implementing the CLA, 12 CFR part 1013, substantially duplicating the Board's Regulation M.[4] Although the Bureau has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.[5]

The Board's and the Bureau's regulations,[6] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[7] Since 2011, the Board and the Bureau have adjusted the Regulation M exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Board and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation M Adjustment Calculation Rule).[8] The Regulation M Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Board and the Bureau will not adjust the exemption threshold from the prior year. The Regulation M Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2022 Adjustment and Commentary Revision

Effective January 1, 2022, the exemption threshold amount is increased from $58,300 to $61,000. This amount is based on the CPI–W in effect on June 1, 2021, which was reported on May 12, 2021 (based on April 2021 data).[9] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 12, 2021 reflects a 4.7 percent increase in the CPI–W from April 2020 to April 2021. Accordingly, the 4.7 percent increase in the CPI–W from April 2020 to April 2021 results in an exemption threshold amount of $61,000, after rounding. The Board and the Bureau are revising the commentaries to their respective regulations to add new comment 2(e)–11.xiii to state that, from January 1, 2022 through December 31, 2022, the threshold amount is $61,000. These revisions are effective January 1, 2022.[10]

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] 76 FR 18349 (Apr. 4, 2011); 76 FR 18354 (Apr. 4, 2011).

[4] *See* 76 FR 78500 (Dec. 19, 2011); 81 FR 25323 (Apr. 28, 2016).

[5] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[6] 12 CFR 213.2(e)(1) (Board) and 12 CFR 1013.2(e)(1) (Bureau).

[7] *See* comments 2(e)–9 in Supplements I of 12 CFR parts 213 and 1013.

[8] *See* 81 FR 86256 (Nov. 30, 2016).

[9] The Bureau of Labor Statistics calculates consumer-based indices for each month, but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2021 were reported on May 12, 2021, and reflect economic conditions in April 2021.

[10] The agencies note that to add new comment 2(e)–11.xiii to their respective rules, Supplement I to part 213, *section 213.2 paragraph 2(e)* (Board) and Supplement I to part 1013, *section 1013.2,* paragraph *2(e)* (Bureau) are being republished in their entirety to comply with the **Federal Register**'s publication requirement.

interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation M Adjustment Calculation Rule. For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[13] the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Bureau Signing Authority

The Associate Director of Research, Markets, and Regulations, Janis K. Pappalardo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects

12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1013

Administrative practice and procedure, Advertising, Consumer protection, Reporting and recordkeeping requirements, Truth in lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

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

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

■ 2. In Supplement I to Part 213, under *Section 213.2—Definitions,* revise *2(e) Consumer Lease,* as follows:

Supplement I to Part 213—Official Staff Interpretations

* * * * *

Section 213.2—Definitions

* * * * *

2(e) Consumer Lease. 1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a) and 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

■ 3. The authority citation for part 1013 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 sec. 1100E, 124 Stat. 1376.

■ 4. In Supplement I to part 1013, under *Section 1013.2—Definitions,* revise *2(e)—Consumer Lease* to read as follows:

Supplement I to Part 1013—Official Interpretations

* * * * *

Section 1013.2—Definitions

* * * * *

2(e) Consumer Lease 1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 1013.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration

or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 1013.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 1013.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann Misback,

Secretary of the Board.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–25909 Filed 11–29–21; 8:45 am]

BILLING CODE 6210–01–P; 4810–25–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1757]

RIN 7100–AG20

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are publishing final rules amending the official interpretations and commentary for the agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be

adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Under regulations adopted by the Board and the Bureau, if there is no annual percentage increase in the CPI–W, the Board and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2021, the exemption threshold will increase from $58,300 to $61,000 effective January 1, 2022. Because the Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases, the Board and the Bureau are making similar amendments to each of their respective regulations implementing the Consumer Leasing Act elsewhere in the Rules section of this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667.

Bureau: Lanique Eubanks, Senior Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in TILA for exempt consumer credit transactions,[1] and the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation M (which implements the CLA) (collectively, the Board Final Threshold Rules).[3]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation Z implementing TILA, 12 CFR part 1026, substantially duplicating the Board's Regulation Z.[4] Although the Bureau has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.[5]

The Board's and the Bureau's regulations,[6] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[7] Since 2011, the Board and the Bureau have adjusted the Regulation Z exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Board and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation Z Adjustment Calculation Rule).[8] The Regulation Z Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Board and the Bureau will not adjust the exemption threshold from the prior year. The Regulation Z Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2021 Adjustment and Commentary Revision

Effective January 1, 2022, the exemption threshold amount is increased from $58,300 to $61,000. This amount is based on the CPI–W in effect on June 1, 2021, which was reported on May 12, 2021 (based on April 2021 data).[9] The CPI–W is a subset of the

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] 76 FR 18354 (Apr. 4, 2011); 76 FR 18349 (Apr. 4, 2011).

[4] *See* 76 FR 79768 (Dec. 22, 2011); 81 FR 25323 (Apr. 28, 2016).

[5] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[6] 12 CFR 226.3(b)(1)(ii) (Board) and 12 CFR 1026.3(b)(1)(ii) (Bureau).

[7] *See* comments 3(b)–1 in Supplements I of 12 CFR parts 226 and 1026.

[8] *See* 81 FR 86260 (Nov. 30, 2016).

[9] The Bureau of Labor Statistics calculates consumer-based indices for each month, but does

CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 12, 2021 reflects a 4.7 percent increase in the CPI–W from April 2020 to April 2021. Accordingly, the 4.7 percent increase in the CPI–W from April 2020 to April 2021 results in an exemption threshold amount of $61,000, after rounding. The Board and the Bureau are revising the commentaries to their respective regulations to add new comment 3(b)–3.xiii to state that, from January 1, 2022 through December 31, 2022, the threshold amount is $61,000. These revisions are effective January 1, 2022.[10]

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation Z Adjustment Calculation Rule. For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[13] the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Bureau Signing Authority

The Associate Director of Research, Markets, and Regulations, Janis K. Pappalardo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l) and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 2. In Supplement I to part 226, under *Section 226.3—Exempt Transactions,* revise *3(b) Credit over applicable threshold amount,* to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

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Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

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not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2021 were reported on May 12, 2021 and reflect economic conditions in April 2021.

[10] The agencies note that to add new comment 3(b)–3.xiii to their respective rules, Supplement I to Part 226, *section 226.3 paragraph 3(b)* (Board) and Supplement I to part 1026, *section 1026.3,* paragraph *3(b)* (Bureau) are being republished in their entirety to comply with the **Federal Register**'s publication requirement.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is

exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph 4.iv.B(1) of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph 4.iv.B(1) of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met.

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i. of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 4. In Supplement I to part 1026, under *Section 1026.3—Exempt Transactions,* revise *3(b)—Credit Over Applicable Threshold Amount* to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

4. *Open-end credit.* i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 1026.6 (account-opening disclosures), § 1026.7 (periodic statements), § 1026.52 (limitations on fees), and § 1026.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no

requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 1026.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 1026.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

2. Same facts as in paragraph 4.iv.B.1 of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 1026.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

3. Same facts as in paragraph 4.iv.B.1 of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 1026.3(b) exemption on April 1 of year two, the account does not qualify for a § 1026.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.* i. *Qualifying for exemption.* A closed-end loan is exempt under § 1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the

threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.* i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann Misback,

Secretary of the Board.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–25910 Filed 11–29–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0925; Airspace Docket No. 20–ANM–18]

RIN 2120–AA66

Modification of Class D and Class E Airspace; Tacoma Narrows Airport, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above ground level (AGL) at Tacoma Narrows Airport, Tacoma, WA. A review of the airspace was initiated due to corresponding reviews at McChord Field (Joint Base Lewis-McChord) and Gray AAF (Joint Base Lewis-McChord). All three locations were evaluated at the same time due to their close proximity to one another and operational interdependence. After a review of the airspace, the FAA found it necessary to modify the existing airspace for the safety and management of Instrument Flight Rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, January 27, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above ground level to support IFR operations at Tacoma Narrows Airport, Tacoma, WA.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 71289; November 9, 2020) for Docket No. FAA–2020–0925 to modify the Class D and Class E airspace at Tacoma Narrows Airport, Tacoma, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment in support of the action was received.

Class D and Class E airspace designations are published in paragraphs 5000, 6002, 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by modifying the lateral boundaries of the Class D and Class E surface airspace and the Class E airspace extending upward from 700 feet AGL at Tacoma Narrows Airport, Tacoma, WA. A review of the airspace was initiated due to corresponding reviews at McChord Field (Joint Base Lewis-McChord) and Gray AAF (Joint Base Lewis-McChord). All three locations were evaluated at the same time due to their close proximity to one another and operational interdependence. The airspace at McChord Field and Gray AAF (Joint Base Lewis-McChord) were reviewed due to three actions. The FAA decommissioned the McChord VORTAC because the U.S. Air Force was no longer going to maintain the NAVAID. The U.S. Air Force requested the elimination of previously excluded airspace, which required an airspace review to evaluate that request, and the Class D airspace at McChord Field and Gray AAF (Joint Base Lewis-McChord) had not been examined in the previous two years, as required by FAA Orders.

The Tacoma Narrows Airport Class D and Class E surface airspace that extends to 5.3 miles south of the airport would be removed as it is no longer needed for arrivals or departures.

In addition, the Class E airspace extending upward from 700 feet AGL within 4 miles each side of the 007° and 187° bearings from the Tacoma Narrows Airport extending to 8 miles north and 7 miles south of the airport will be shortened to 6 miles, respectively.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Tacoma, WA [Amended]

Tacoma Narrows Airport, WA
(Lat. 47°16′05″ N, long. 122°34′41″ W)
McChord Field (Joint Base Lewis-McChord), WA
(Lat. 47°08′17″ N, long. 122°28′34″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4-mile radius of Tacoma Narrows Airport, excluding that airspace within the McChord Field (Joint Base Lewis-McChord) Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM WA E2 Tacoma, WA [Amended]

Tacoma Narrows Airport, WA
(Lat. 47°16′05″ N, long. 122°34′41″ W)
McChord Field (Joint Base Lewis-McChord), WA
(Lat. 47°08′17″ N, long. 122°28′34″ W)

That airspace extending upward from the surface within a 4-mile radius of Tacoma Narrows Airport, excluding that airspace within the McChord Field (Joint Base Lewis-McChord) Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM WA E5 Tacoma, WA [Amended]

Tacoma Narrows Airport, WA
(Lat. 47°16′05″ N, long. 122°34′41″ W)

That airspace extending upward from 700 feet above the surface within 4 miles each side of the 007° bearing from the Tacoma Narrows Airport extending to 6 miles north of the airport, and within 4 miles each side of a 187° bearing from the airport extending to 6 miles south of the airport.

Issued in Des Moines, Washington, on November 23, 2021.

B.G. Chew,

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

[FR Doc. 2021–25937 Filed 11–29–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2020–HA–0073]

RIN 0720–AB79

TRICARE Program: TRICARE Reserve Select Coverage for Members of the Selected Reserve

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule implements the National Defense Authorization Act for Fiscal Year 2020 (NDAA–2020), which removes the permanent eligible exclusion for TRICARE Reserve Select (TRS) coverage for a member of the Selected Reserve of the Ready Reserve who is enrolled or eligible to enroll in a Federal Employees Health Benefits (FEHB) Program health insurance plan. The law now excludes TRS coverage for such members only during the period preceding January 1, 2030. The law was effective upon enactment of NDAA–2020 on December 20, 2019. In implementing the statutory changes, this final rule will improve TRICARE by increasing options for access to care for Federal employees.

DATES: This final rule is effective December 30, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Schneider, Defense Health Agency, TRICARE Health Plan, TRICARE Policy and Programs Section, *jeremy.m.schneider.civ@mail.mil,* (703) 275–6208.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Rule

This rule is required to implement section 701 of NDAA–2020. As a ''housekeeping'' matter, this rule includes necessary changes to the TRICARE regulation to conform it to the new statutory requirements enacted in the NDAA–2020, over which the Department has no administrative discretion. In implementing section 701 of NDAA–2020, this rule advances the better care component of the Military Health System's aims by expanding the options available to Federal employees.

B. Exception to Notice and Comment

Agency informal rule-making is governed by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* Section 553(b) requires that, unless the rule falls within one of the enumerated exemptions, an agency must publish a notice of proposed rulemaking in the **Federal Register** that provides interested persons an opportunity to submit written data, views, or arguments, prior to finalization of regulatory requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with the prior notice and opportunity for public comment requirement when the agency, for ''good cause,'' finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. Section 553 also requires an agency to include an explanation of such good cause with the publication of the rule. As noted in the preamble, the change in law was effective upon enactment on December 20, 2019. The change in law is self-executing and Department of Defense (DoD) has no discretion for implementing the law, including amending the TRICARE regulation to conform it to the statutory requirements. Because DoD cannot change the law, it is impracticable and unnecessary to delay amending the TRICARE regulation to conform it to the law until a full public notice-and-comment process is completed. In addition, it would be contrary to public interest to retain in existence a TRICARE regulation relied upon by the public which contains an eligibility requirement which is legally inconsistent with the controlling legislation for TRS coverage pending completion of a full public notice-and-comment process. Pursuant to 5 U.S.C. 553(b)(B), and for reasons stated in this preamble, the Assistant Secretary of Defense for Health Affairs (ASD(HA)), therefore, concludes that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule.

C. Summary of Major Provisions

The rule amends the TRICARE regulation to conform it to the current law that defines eligibility for TRICARE Reserve Select, specifying that Selected Reserve members eligible for or enrolled in a Federal Employee Health Benefits (FEHB) plan (5 U.S.C. Chapter 89, ''Health Insurance'') are eligible to enroll in TRS beginning January 1, 2030.

D. Legal Authority for This Program

The statutory authority for this final rule is 10 U.S.C. 1076d, as amended by Public Law 116–92, NDAA–2020, Section 701, ''Modification of Eligibility for TRICARE Reserve Select for Certain Members of the Selected Reserve.'' This final rule amends title 32, Code of Federal Regulations (CFR), § 199.24, ''TRICARE Reserve Select,'' which offers the TRICARE Select self-managed, preferred-provider network option and can be found at *https://www.ecfr.gov/cgi-bin/textidx?SID=2e53e1af44c38aa7d9076c076a2acd02&mc=true&node=se32.2.199_124&rgn=div8.* The TRICARE Reserve Select program is established under 10 U.S.C. 1076d, ''TRICARE program: TRICARE Reserve Select coverage for members of the Selected Reserve.''

II. Regulatory History

This final rule is the only regulatory action relating to implementation of section 701 of NDAA–2020.

III. Regulatory Analysis

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''non-significant regulatory action,'' although, not determined to be economically significant, under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. This rule is not economically significant as its effect on the economy is less than $100 million, will not materially adversely affect the economy, a sector of the economy; productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Net benefit is supported by the Defense Health Agency's mission of complying with all NDAA constraints and providing the best health care options to beneficiaries.

b. Summary

This rule amends the current TRICARE regulation which, consistent with 10 U.S.C. 1076d prior to NDAA–2020 amendment, excluded from TRS eligibility any Selected Reserve member who was also enrolled in, or eligible for a health benefit plan under the Federal Employee Health Benefits program under 5 U.S.C. chapter 89, section 8903. According to NDAA–2020, this exclusion will be repealed and these government employees will be eligible for coverage under TRS beginning January 1, 2030, provided they meet all other TRS eligibility requirements.

c. Affected Population

This rulemaking action will apply to an employee of the Federal Government who, under 5 U.S.C. chapter 89, is eligible for the Federal Employee Health Benefit Program and eligible for TRS as described by 32 CFR 199.24(b), ''Qualifications for TRICARE Reserve Select coverage''. These specific beneficiaries will have the option to enroll in TRS beginning January 1, 2030. This enrollment will be voluntary, and will proceed through established enrollment procedures. The affected population will receive notification of this rule change via publication of this final rule and by TRS program literature published by the Defense Health Agency and distributed by TRICARE regional managed care support contractors.

d. Costs

The Future Years Defense Program (FYDP) only projects five years into the future, thus, an accurate estimate of monetary cost to the government cannot be done. Projections templated over FY2020 through FY2025 project cost savings to the DoD in excess of $10 million per fiscal year (FY). This net takes into consideration the revenue lost through fewer Federal Employees Health FEHB Program plan premium contributions and assumes that approximately 33% of employees eligible to switch from their current FEHB Program plan to TRS will do so. Again, these projections are for FY2020–FY2025, and this rule is not to be implemented until calendar year 2030.

The administrative costs of this rule are assessed as only including increased customer service queries and beneficiary education required to ensure beneficiaries have all the necessary information to make an informed decision. Administrative processes to manage plan changes triggered by this rule are already in place.

There is no projected cost to the public. Should they decide to change health plans, employees affected by this rule may experience cost savings due to lower premiums, catastrophic cap, deductible, and other cost shares. However, these savings are subject to plan specifics at the time of rule implementation.

e. Benefits

Extending TRS eligibility to Federal employees increases health care options for beneficiaries, especially through the preferred-provider network (PPN). Depending on their health care needs, the PPN provided by TRS may increase access to care for eligible Federal employees who choose to enroll. The projected monetary cost saving to the government, still to be itemized, is the final important benefit; this rulemaking action frees up Government funds for appropriate reallocation.

f. Alternatives

Alternative 1: No action. Not implementing this rule would be in direct violation of the law set forth in NDAA–2020 requiring TRS to be an option for eligible Federal employees who desire to enroll in TRS coverage beginning January 1, 2030. The result of taking no action would be continued cost to the government in the form of FEHB plans that could have been transferred to TRS beginning in CY2030. Cost to beneficiaries would be the loss of additional coverage options and likely increased health care out-of-pocket costs. There is no benefit to taking no action and the Department has no discretion to forgo compliance with the law requiring this rulemaking action.

Alternative 2: Postponed action. Postponement of rulemaking would result in inconsistency between the TRICARE regulation and the controlling statute. The statute is self-executing and was effective upon enactment of NDAA–2020 on December 20, 2019. Delaying rulemaking to conform the regulation with the law will result in inaccurate information available to the public regarding statutory eligibility for TRS coverage.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

C. Congressional Review Act

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

D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This final rule will not mandate any requirements for State, local, or tribal governments, nor will affect private sector costs.

E. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR 199.24 does not impose reporting or

recordkeeping requirements under the Paperwork Reduction Act of 1995. Existing information collection requirements of the TRICARE program will be utilized, using a DD Form 2896–1, Reserve Component Health Coverage Request Form. This enrollment form, accessible through the Beneficiary Web Enrollment (BWE) website, does not meet information collection requirements and thus does not trigger requirements of the Paperwork Reduction Act.

F. Executive Order 13132, ''Federalism''

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Fraud, Health care, Health insurance, Individuals with disabilities, Mental health programs, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.24 by revising paragraph (b)(1) introductory text to read as follows:

§ 199.24 TRICARE Reserve Select.

* * * * *

(b) * * *

(1) *Ready Reserve member.* A Ready Reserve member qualifies to purchase TRICARE Reserve Select coverage prior to January 1, 2030, if the Service member meets the criteria listed in both paragraphs (b)(1)(i) and (ii) of this section. Beginning January 1, 2030, only the criteria in paragraph (b)(1)(i) of this section is necessary for qualification.

* * * * *

Dated: November 19, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–25720 Filed 11–29–21; 8:45 am]

BILLING CODE 5001–06–P

POSTAL SERVICE

39 CFR Part 20

International Competitive Services Product and Price Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect the prices, product features, and classification changes to Competitive Services and other minor changes, as established by the Governors of the Postal Service.

DATES: Effective January 9, 2022.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at 202–268–6592 or Kathy Frigo at 202–268–4178.

SUPPLEMENTARY INFORMATION: New prices will be posted under Docket Number CP2022–22 on the Postal Regulatory Commission's website at *http://www.prc.gov.*

Over the course of time, mailing services to countries change due to a variety of reasons. The Postal Service is updating IMM Exhibit 292.45a to reflect that International Priority Airmail® (IPA®) service is available to Sudan.

In addition, the Postal Service is extending USPS Tracking Plus® service to certain international products, allowing customers to request the Postal Service retain scan data, or scan and signature data, for certain pieces beyond the Postal Service's standard data retention period, for up to 7 years. USPS Tracking Plus service is available for certain pieces sent via Priority Mail Express International® service (PMEI), Priority Mail International® (PMI) service, and single-piece First-Class Package International Service® (FCPIS®) for which Electronic USPS Delivery Confirmation International Service is available, and certain pieces for those services for which insurance has been purchased (not to include Global Express Guaranteed® (GXG®)). For pricing, see the Postal Explorer® website at *https://pe.usps.com.* Customers may request USPS Tracking Plus service online at *www.usps.com* or through a Shipping Services File.

This final rule describes the international price and classification changes and the corresponding mailing standards changes for the following Competitive Services:

- Global Express Guaranteed.
- Priority Mail Express International.
- Priority Mail International.
- First-Class Package International Service.
- International Priority Airmail® (IPA®).
- International Surface Air Lift® (ISAL®).
- Direct Sacks of Printed Matter to One Addressee (Airmail M-bag® services).
- The following competitive international extra services and fees:
- International Insurance.
- Certificate of Mailing.
- International Registered Mail.
- International Return Receipt.
- International Postal Money Orders.
- International Money Order Inquiry Fee.
- International Money Transfer Service.
- Customs Clearance and Delivery Fee.

New prices will be located on the Postal Explorer website at *https://pe.usps.com.*

Global Express Guaranteed

Global Express Guaranteed (GXG) service provides fast international shipping, with international transportation and delivery provided through an alliance with FedEx Express®. The price increase for GXG service averages 2.3 percent.

The Postal Service provides Commercial Base® pricing to online customers who prepare and pay for GXG shipments via USPS-approved payment methods (other than Click-N-Ship® service), with a discount below the published retail prices for GXG service. Customers who prepare GXG shipments via Click-N-Ship service will continue to pay retail prices. Commercial Plus® prices are set to match the Commercial Base prices.

Priority Mail Express International

Priority Mail Express International (PMEI) service provides fast service to approximately 180 countries in 3–5 business days for many major markets, although the actual number of days may vary based upon origin, destination, and customs delays. PMEI with Money-Back Guarantee service is available for certain destinations. (Due to COVID–19 service impacts, PMEI with Money-Back Guarantee service has been suspended for several destinations until further notice. For more information, see the USPS Service Updates page on *www.usps.com.*) The price increase for PMEI service averages 3.2 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and pay for PMEI shipments via permit imprint, online at *USPS.com*®, or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship service). Customers who prepare PMEI shipments via Click-N-Ship service pay retail prices.

Commercial Plus will be equivalent to Commercial Base; however, deeper discounting may still be available to customers through negotiated service agreements.

The Postal Service will continue to include PMEI service in customized contracts offered to customers who meet certain revenue thresholds and are willing to commit a larger amount of revenue to the USPS® for PMEI service and PMI service.

PMEI flat rate pricing continues to be available for Flat Rate Envelopes.

Priority Mail International

Priority Mail International (PMI) is an economical way to send merchandise and documents to approximately 180 countries in 6–10 business days for many major markets, although the actual number of days may vary based upon origin, destination, and customs delays. The price increase for PMI service averages 3.7 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and pay for PMI items via permit imprint, online at *USPS.com,* or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship). Customers who prepare PMI shipments via Click-N-Ship pay retail prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting may still be made available to customers through negotiated service agreements.

The Postal Service will continue to include PMI service in customized contracts offered to customers who meet certain revenue thresholds and are willing to commit to a larger amount of revenue to the USPS for PMEI and PMI.

PMI flat rate pricing continues to be available for Flat Rate Envelopes, Small Flat Rate Boxes, and Medium and Large Flat Rate Boxes.

First-Class Package International Service

First-Class Package International Service (FCPIS) is an economical international service for small packages not exceeding 4 pounds in weight and $400 in value. The price increase for FCPIS averages 4.2 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and pay for FCPIS items via permit imprint or by USPS-approved online payment methods. Customers who prepare FCPIS shipments via Click-N-Ship service pay retail prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting will be made available to customer through negotiated service agreements.

Electronic USPS Delivery Confirmation International service (E–USPS DELCON INTL®) is available for FCPIS items to select destination countries at no charge.

International Priority Airmail and International Surface Air Lift

International Priority Airmail (IPA) service, including IPA M-bags, is a commercial service designed for volume mailings of all First-Class Mail International postcards, letters, and large envelopes (flats), and for volume mailings of FCPIS packages (small packets) weighing up to a maximum of 4.4 pounds. IPA shipments are typically flown to foreign destinations (exceptions apply to Canada and Mexico) and are then entered into that country's air or surface priority mail system for delivery. The price increase for IPA letters, flats, and packets is 4.9 percent, and there is no increase for IPA M-bags. International Surface Airlift (ISAL) is like IPA except that once flown to the foreign destination, ISAL is entered into that country's air or surface nonpriority mail system for delivery. The price increase for ISAL letters, flats, and packets is 8.2 percent, and the price increase for ISAL M-bags is 2.9 percent.

Direct Sacks of Printed Matter to One Addressee (Airmail M-Bags)

An Airmail M-bag is a direct sack of printed matter sent to a single foreign addressee at a single address. Prices are based on the weight of the sack. The price increase for Airmail M-bag service averages 5.0 percent.

International Extra Services and Fees

Depending on country destination and mail type, customers may add a variety of extra services to their outbound shipments and pay a variety of fees. The Postal Service proposes to increase fees for certain competitive international extra services as follows:

- GXG insurance: There is no charge for GXG insurance for coverage up to $100. The fee for GXG insurance will increase to $1.35 for each additional $100 or fraction over $100, up to a maximum indemnity of $2,499 per shipment (the maximum indemnity varies by country).

GXG insurance	Fee
$100	$0.00
Each additional $100 or fraction over $100	1.35

Maximum insurance $2,499 (varies by country).

- PMEI and PMI insurance: There is no charge for PMEI and PMI merchandise insurance coverage up to $200. The fee for PMEI and PMI merchandise insurance for each additional $100 or fraction over $200 is set forth in the table below, up to a maximum indemnity of $5,000 (the maximum indemnity varies by country).

Indemnity limit not over	Fee
Up to $200	$0.00
$200.01–$300.00	7.15
$300.01–$400.00	9.05
$400.01–$500.00	10.95
$500.01–$600.00	12.85
$600.01–$700.00	14.75
$700.01–$800.00	16.60
$800.01–$900.00	18.50

$18.50 plus $1.90 per $100 or fraction thereof over $900 in declared value. Maximum insurance $5,000 (varies by country).

- Certificate of mailing service: Prices for competitive international certificate of mailing service will be as follows:

CERTIFICATE OF MAILING

Individual pieces	Fee
Individual article (PS Form 3817)	$1.65
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.65
Firm mailing sheet (PS Form 3665), per piece (minimum 3) First-Class Mail International only	0.57
Bulk quantities	
For first 1,000 pieces (or fraction thereof)	9.35
Each additional 1,000 pieces (or fraction thereof)	1.20
Duplicate copy of PS Form 3606	1.65

- International Registered Mail service: The fee for competitive international registered mail will increase to $17.15.
- International return receipt service: The fee for competitive international return receipt service will increase to $4.75.
- Customs clearance and delivery fee: The competitive customs clearance and delivery fee per dutiable item will increase to $7.05.
- Pickup on Demand: The fee for pickup on demand will remain at $25.00.
- International Postal Money Orders: The fee for international postal money orders will increase to $12.25.
- International Money Order Inquiry: The fee for international money orders inquiry will increase to $9.00.
- International Money Transfer Service (Sure Money® service): Prices for international money transfer service will be as follows:

International money transfer service (Sure Money)	Fee
$0.01–$750.00	$17.10
$750.01–$1500.00	24.75
Refunds	37.50

International money transfer service (Sure Money)	Fee
Change of Recipient	19.95

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM) as follows:

* * * * *

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

220 Priority Mail Express International

* * * * *

222 Eligibility

* * * * *

[Revise 222.7 to read as follows:]

222.7 Extra Services

222.71 Merchandise Insurance

Additional merchandise insurance coverage above $200, up to a maximum of $5,000, may be purchased at the sender's option. See Exhibit 322.2 for individual country merchandise insurance limits. See Notice 123, *Price List,* for the fee schedule for optional Priority Mail Express International merchandise insurance coverage.

222.72 Tracking Plus

Customers may purchase USPS Tracking Plus service for certain pieces, when available, online at *usps.com* or through a Shipping Services File. For pricing, see Notice 123, *Price List.*

* * * * *

230 Priority Mail International

* * * * *

232 Eligibility

* * * * *

232.9 Extra Services

* * * * *

[Add a new section to read as follows:]

232.93 Tracking Plus

Customers may purchase USPS Tracking Plus service for certain pieces, when available, online at *usps.com* or through a Shipping Services File. For pricing, see Notice 123, *Price List.*

* * * * *

250 First-Class Package International Service

* * * * *

252 Eligibility

* * * * *

252.5 Extra Services

* * * * *

[Add a new section to read as follows:]

252.54 Tracking Plus

USPS Tracking Plus service is available for certain pieces sent via single-piece First-Class Package International Service for which Electronic USPS Delivery Confirmation International Service is available. Customers may purchase USPS Tracking Plus service for certain pieces, when available, online at *usps.com* or through a Shipping Services File. For pricing, see Notice 123, *Price List.*

* * * * *

292 International Priority Airmail (IPA) Service

* * * * *

292.4 Mail Preparation

* * * * *

292.45 IPA Foreign Office of Exchange Codes and Price Groups

* * * * *

Exhibit 292.45a

IPA Foreign Office of Exchange Codes and Price Groups

[In alphabetical order, add an entry for Sudan to read as follows:]

Country labeling name	Foreign Office of Exchange code	Price group
* *	* *	*
Sudan	KRT	5
* *	* *	*

* * * * *

3 Extra Services

* * * * *

[Add a new part to read as follows:]

390 Tracking Plus

The Postal Service offers USPS Tracking Plus service for certain international products, allowing customers to request the Postal Service retain scan data, or scan and signature data, for certain pieces beyond the Postal Service's standard data retention period, for up to 7 years. USPS Tracking Plus service is available for certain pieces sent via Priority Mail Express International service, Priority Mail International service, and single-piece First-Class Package International Service for which Electronic USPS Delivery Confirmation International Service is available, and certain pieces for those services for which insurance has been purchased (not to include Global Express Guaranteed service). For pricing, see Notice 123, *Price List.* Customers may request USPS Tracking Plus service for certain pieces, when available, online at *usps.com* or through a Shipping Services File.

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Ruth Stevenson,

Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2021–25978 Filed 11–29–21; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2017–0548; FRL: 8260.1–02–OAR]

Additional Revised Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards: El Paso County, Texas and Weld County, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action revises the initial air quality designations for two counties associated with two nonattainment areas for the 2015 primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone. In a July 10, 2020, decision, the District of Columbia Circuit Court remanded to the Environmental Protection Agency (EPA

or Agency), but did not vacate, the April 30, 2018, designations for 16 counties associated with nine nonattainment areas located in seven states. In response, the EPA has re-evaluated the designations for the remanded counties by applying a uniform, nationwide analytical approach and interpretation of the designation provisions of the Clean Air Act (CAA) in considering the specific facts and circumstances of the areas using only data and information available at the time of the original designations. In this final action, the EPA is revising the boundaries of two nonattainment areas, affecting the designation status of two counties in two separate states (Colorado and Texas). The EPA addressed the 14 additional remanded counties in a previous **Federal Register** document.

DATES: The effective date of this rule is December 30, 2021.

ADDRESSES: The EPA has established a public docket for these ozone designations at *https://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2017–0548. Although listed in the docket index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are currently closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. The Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

In addition, the EPA has established a website for the designations for the 2015 ozone NAAQS at *https://www.epa.gov/ozone-designations.* The website includes the EPA's final revised designations action, technical support documents, revised responses to comments and other related information.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, contact Carla Oldham, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–01, Research Triangle Park, N.C. 27711, phone number (919) 541–3347 or by email at: *oldham.carla@epa.gov.* The following EPA contacts can answer questions regarding areas affiliated with a particular EPA Regional office:

Region 6—Carrie Paige, telephone (214) 665–6521, email at *paige.carrie@epa.gov.*

Region 8—Abby Fulton, telephone (303) 312–6563, email at *fulton.abby@epa.gov.*

Regional offices	Affected state(s)
EPA Region 6—State Planning & Implementation Branch, 1201 Elm Street, Dallas, Texas 75270	Texas.
EPA Region 8—Air Quality Planning Branch, 1595 Wynkoop Street, Denver, Colorado 80202	Colorado.

Most of the EPA's offices are closed to reduce the risk of transmitting COVID–19, but staff remain available via telephone and email. The EPA encourages the public to review information related to the EPA's final action responding to the July 10, 2020, Court Decision online at *https://www.epa.gov/ozone-designations* and in the public docket at *https://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2017–0548.

SUPPLEMENTARY INFORMATION:

Table of Contents

The following is an outline of the Preamble.

I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
CAA Clean Air Act
CFR Code of Federal Regulations
CRA Congressional Review Act
DC District of Columbia
EPA Environmental Protection Agency
FR Federal Register
NAAQS National Ambient Air Quality Standards
NTTAA National Technology Transfer and Advancement Act
ppm Parts per million
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SIP State Implementation Plan
TAR Tribal Authority Rule
TSD Technical Support Document
UMRA Unfunded Mandate Reform Act
U.S. United States
U.S.C. United States Code

II. What is the purpose of this action?

The purpose of this final action is to announce and promulgate revised 2015 ozone NAAQS designations for two counties in response to the July 10, 2020, decision by the District of Columbia Circuit Court that remanded the counties to the EPA for further consideration. The affected counties were initially designated on April 30, 2018. The EPA addressed the 14 additional remanded counties in a previous **Federal Register** document (86 FR 31438; June 14, 2021).

On October 1, 2015, the EPA promulgated revised primary and secondary NAAQS for ozone (80 FR 6592; October 26, 2015). In that action, the EPA strengthened both standards to a level of 0.070 parts per million (ppm), while retaining their indicators, averaging times, and forms. The EPA revised the ozone standards based on an

integrated assessment of an extensive body of new scientific evidence, which substantially strengthens our knowledge regarding ozone-related health and welfare effects, the results of exposure and risk analyses, the advice of the Clean Air Scientific Advisory Committee and consideration of public comments.

The process for designating areas following promulgation of a new or revised NAAQS is contained in the CAA section 107(d) (42 U.S.C. 7407(d)). After promulgation of a new or revised NAAQS, the CAA requires the EPA to determine if areas in the country meet the new standards. Accordingly, the EPA designated all areas of the country as to whether they met, or did not meet, the NAAQS in three rounds.[1]

Several environmental and public health advocacy groups, three local government agencies, and the state of Illinois filed a total of six petitions for review challenging the EPA's 2015 ozone NAAQS designations promulgated on April 30, 2018. The District of Columbia Circuit Court consolidated the petitions into a single case, *Clean Wisconsin* v. *EPA,* 964 F.3d 1145 (D.C. Cir. 2020). Collectively, the petitioners challenged aspects of the EPA's final designations for 17 counties associated with nine nonattainment areas. The petitioners primarily argued that the EPA improperly designated counties (in whole or part) as attainment that should have been designated as nonattainment because of contribution to nearby counties with violating monitors. In its response brief, the EPA requested voluntary remand of the final designation decisions for 10 counties associated with four nonattainment areas to further review those designations.

On July 10, 2020, the District of Columbia Circuit Court granted the EPA's requests for voluntary remand and also remanded several other counties (*see Clean Wisconsin,* 964 F.3d 1145). In total, the Court remanded back to the EPA 16 counties associated with nine nonattainment areas. The Court did not vacate the initial April 30, 2018, designations, but required the EPA to ''issue revised designations as expeditiously as practicable.'' In response to the Court decision, the EPA re-evaluated the existing technical record, including data and information, that was used for the initial April 2018 designations under a uniform, nationwide analytical approach, to support either revising or affirming the designations for these remanded counties. Table 1 summarizes the EPA's revised 2015 ozone NAAQS designations for the two remanded counties that are addressed in this **Federal Register** document. The technical support documents (TSDs) that describe the re-evaluation of these counties are included in the public docket. The amended 40 CFR part 81 tables for the revised designations, which appear in the regulatory tables included at the end of this final rule, identify the revised designation for the two remanded counties and the classification for the associated nonattainment areas.

TABLE 1—REMAND DESIGNATIONS FOR EL PASO COUNTY, TEXAS AND WELD COUNTY, COLORADO FOR THE 2015 OZONE NAAQS

Nonattainment area name	Remanded county	April 2018 designation	Remand designation
El Paso-Las Cruces, Texas-New Mexico[a]	El Paso County, Texas	Full county attainment	Full county nonattainment.
Denver Metro/North Front Range, Colorado	Weld County, Colorado	Partial county nonattainment	Full county nonattainment.

[a] The EPA is expanding the initially designated Doña Ana County (Sunland Park Area), New Mexico nonattainment area to include El Paso County, Texas, and for clarity is renaming the area as the El Paso-Las Cruces, Texas-New Mexico nonattainment area.

For the 14 remanded counties addressed in a previous action, as discussed further in Sections V and VI of this document, the EPA exercised its authority to take final action under section 107(d) of the CAA. For the remaining two remanded counties addressed in this action (El Paso County, Texas and Weld County, Colorado), a different process is required. As discussed in Section V of this document, CAA section 107(d) specifies that whenever the EPA Administrator intends to make a modification to a state's designation recommendation, the EPA must notify the state and provide the state with the opportunity to submit additional information to demonstrate why the EPA's intended modification is inappropriate. The EPA is required to give the notification no later than 120 days before promulgating the final designation, including any modification thereto.

After re-evaluating the El Paso County, Texas and Weld County, Colorado areas in response to the court remand, the EPA notified Texas and Colorado of the Agency's intent to make modifications to the state recommendations for those two counties and conducted the required 120-day notification process. CAA section 107(d)(1)(B)(ii). The EPA also sent a letter to New Mexico notifying that state of the EPA's intended modification of Texas's attainment recommendation that would expand the boundary of the existing Doña Ana County (Sunland Park Area), NM nonattainment area to include El Paso County, TX and, thus, become a multi-state nonattainment area. The EPA also issued a notice of availability for these letters and offered a public comment period (86 FR 31460; June 14, 2021).

III. What is ozone and how is it formed?

Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources. Ozone is predominately a summertime air pollutant. However, high ozone concentrations have also been observed in cold months, where a few areas in the Western United States (U.S.) have experienced high levels of local VOC and NO_X emissions that have formed ozone when snow is on the ground and temperatures are near or below freezing. Ozone and ozone precursors can be transported to an area from sources in nearby areas or from

[1] The EPA designated areas for the 2015 ozone NAAQS in three rounds, resulting in 52 nonattainment areas. In Round 1 (82 FR 54232; November 6, 2017), the EPA designated 2,646 counties, two separate tribal areas and five territories as attainment/unclassifiable, and one area as unclassifiable. In Round 2 (83 FR 25776; April 30, 2018), the EPA designated 51 nonattainment areas, one unclassifiable area, and all remaining areas as attainment/unclassifiable, except for the eight counties in the San Antonio, Texas area. In Round 3 (83 FR 35136; July 17, 2018), the EPA designated one county in the San Antonio area as nonattainment and the other seven counties as attainment/unclassifiable.

sources located hundreds of miles away. For purposes of determining ozone nonattainment area boundaries, the CAA requires the EPA to include areas that contribute to nearby violations of the NAAQS.

IV. What are the 2015 ozone NAAQS and the health and welfare concerns they address?

On October 1, 2015, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.070 ppm (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years).[2] The level of the ozone NAAQS previously set in 2008 is 0.75 ppm. The 2015 ozone NAAQS retain the same general form and averaging time as the 2008 ozone NAAQS.

The primary ozone standards provide protection for children, older adults, and people with asthma or other lung diseases, and other at-risk populations against an array of adverse health effects that include reduced lung function, increased respiratory symptoms and pulmonary inflammation; effects that contribute to emergency department visits or hospital admissions; and mortality. The secondary ozone standards protect against adverse effects to the public welfare, including those related to impacts on sensitive vegetation and forested ecosystems.

V. What are the CAA requirements for air quality designations?

After the EPA promulgates a new or revised NAAQS, the EPA is required to designate all areas in the country as nonattainment, attainment, or unclassifiable, for that NAAQS pursuant to section 107(d)(1)–(2) of the CAA. Section 107(d)(1)(A)(i) of the CAA defines a *nonattainment* area as an area that does not meet the NAAQS or that contributes to a nearby area that does not meet the NAAQS. An *attainment* area is defined by the CAA as any area that meets the NAAQS and does not contribute to any nearby areas that do not meet the NAAQS. *Unclassifiable* areas are defined by the CAA as those that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

Historically for ozone, the EPA has designated most areas that do not meet the definition of nonattainment as unclassifiable/attainment. This category includes areas that have air quality monitoring data meeting the NAAQS and areas that do not have monitors but for which the EPA has no evidence that the areas may be violating the NAAQS or contributing to a nearby violation. In the designations for the 2015 ozone NAAQS, the EPA reversed the order of the label to attainment/unclassifiable to better convey the definition of the designation category and to more easily distinguish the category from the separate unclassifiable category. In a few instances, based on circumstances where some monitoring data are available but are not sufficient for a determination that an area is or is not attaining the NAAQS, the EPA has designated an area as unclassifiable.

The EPA notes that CAA section 107(d) provides the Agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (*e.g.,* ''contributes to'' and ''nearby'') for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA's position is that the statute does not require the Agency to establish bright line tests or thresholds for what constitutes ''contribution'' or ''nearby'' for purposes of designations.[3]

Similarly, the EPA's position is that the statute permits the EPA to evaluate the appropriate application of the term ''area'' to include geographic areas based upon full or partial county boundaries, as may be appropriate for a particular NAAQS. For example, CAA section 107(d)(1)(B)(ii) explicitly provides that the EPA can make modifications to designation recommendations for an area ''or portions thereof,'' and under CAA section 107(d)(1)(B)(iv) a designation remains in effect for an area ''or portion thereof'' until the EPA redesignates it.

Section 107(d)(1)(B) of the CAA requires the EPA to issue initial area designations within 2 years of promulgating a new or revised NAAQS. However, if the Administrator has insufficient information to make these designations within that time frame, the EPA has the authority to extend the deadline for designation decisions by up to 1 additional year.

By no later than 1 year after the promulgation of a new or revised NAAQS, CAA section 107(d)(1)(A) provides that each state governor shall recommend air quality designations, including the appropriate boundaries for areas, to the EPA. The EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term ''necessary,'' but the EPA interprets this to authorize the Administrator to modify designation recommendations that are inconsistent with the statutory language, including modification of recommended boundaries for nonattainment areas that are not supported by the facts or analysis. If the EPA intends to modify a state's recommendation, section 107(d)(1)(B) of the CAA requires the EPA to notify the state of any such intended modifications not less than 120 days prior to the EPA's promulgation of the final designation. These notifications are commonly known as the ''120-day letters.'' During this period, if the state does not agree with the EPA's proposed modification, it has an opportunity to respond to the EPA and to demonstrate why it believes the modification proposed by the EPA is inappropriate. If a state fails to provide any recommendation for an area, in whole or in part, the EPA must promulgate a designation that the Administrator deems appropriate, pursuant to CAA section 107(d)(1)(B)(ii).

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction. The Tribal Authority Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by the EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to the EPA.

VI. What is the chronology for this designations action and what guidance did the EPA provide?

On February 25, 2016, the EPA issued guidance for states and tribal agencies to use for purposes of making designation recommendations as required by CAA section 107(d)(1)(A). (*See* February 25, 2016, memorandum from Janet G. McCabe, Acting Assistant Administrator, to Regional Administrators, Regions 1–10, titled, ''Area Designations for the 2015 Ozone National Ambient Air Quality Standards'' (Designations Guidance)). The Designations Guidance provided

[2] *See* 80 FR 65296; October 26, 2015, for a detailed explanation of the calculation of the 3-year, 8-hour average and 40 CFR part 50, Appendix U.

[3] This view was confirmed in *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009).

the anticipated timeline for designations and identified important factors that the EPA recommended states and tribes consider in making their recommendations and that the EPA intended to consider in promulgating designations. These factors include air quality data, emissions and emissions-related data, meteorological data, geography/topography, and jurisdictional boundaries. In the Designations Guidance, the EPA asked that states and tribes submit their designation recommendations, including appropriate area boundaries, to the EPA by October 1, 2016. The EPA had previously issued two guidance memoranda related to designating areas of Indian country that also apply for designations for the 2015 ozone NAAQS.

See December 20, 2011, memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, ''Policy for Establishing Separate Air Quality Designations for Areas of Indian Country,'' (Tribal Designations Guidance) and December 20, 2011, memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, ''Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process.'' In the Designation Guidance, the EPA indicated the Agency expected to complete the initial designations for the 2015 ozone NAAQS on a 2-year schedule, by October 1, 2017, consistent with CAA 107(d)(1)(B)(i).

On November 6, 2017, the EPA designated as attainment/unclassifiable 2,646 counties,[4] including tribal lands within those counties, for which the states recommended a designation of attainment or attainment/unclassifiable. This represents approximately 85 percent of the counties in the U.S. The EPA also designated a three-county area in Washington as unclassifiable as recommended by the state. Consistent with the EPA's Tribal Designation Guidance, the EPA designated two areas of Indian country (Fond du Lac Band of Lake Superior Chippewa Indians and Forest County Potawatomi Community) as separate attainment/unclassifiable areas.

On or about December 22, 2017, the EPA sent 120-day letters to Governors and tribal leaders notifying them of the EPA's preliminary response to their designation recommendations for all areas of the country not designated in the November 2017 action, with the exception of eight counties in the San Antonio, Texas metropolitan area. For the areas addressed in the 120-day letters, the EPA requested that states and tribes submit any additional information that they wanted the EPA to consider in making final designation decisions by February 28, 2018, including any certified 2017 air quality monitoring data.

Although not required by section 107(d)(2)(B) of the CAA, the EPA also provided a 30-day public comment period on the designation recommendations from states and tribes and the EPA's intended designations addressed in the 120-day letters to states and tribes. The EPA announced the public comment period in the **Federal Register** on January 5, 2018 (83 FR 651). On April 30, 2018, the EPA finalized designations for the areas addressed in the December 2017 120-day letter responses to states and tribes.

In response to the *Clean Wisconsin* court decision relating to that April 30, 2018, action, the EPA has again applied a uniform, nationwide analytical approach and interpretation of CAA section 107(d)(1) to these areas across the country and reviewed the state and tribal responses and public comments, as well as reviewed the court decision itself, in the Agency's decision to revise certain designations remanded by the court. Comments from the states, tribes and the public, and the EPA's updated responses to significant comments, are also available in the docket along with the individual TSDs for areas with associated remanded counties.

In the *Clean Wisconsin* decision, the D.C. Circuit directed the EPA to complete a process to revise, as appropriate, its April 2018 designations for the remanded counties ''as expeditiously as practicable.'' The CAA does not require the EPA to follow a specific process when final designations are remanded to the Agency. The EPA's final action reflects a reasonable interpretation of the CAA section 107(d) requirements, particularly given the court's direction.

Under CAA section 107(d)(2)(B), the EPA is not required to provide an Administrative Procedure Act (APA) public comment period for designations actions. CAA section 107(d)(1)(B)(ii) lays out a particular process when the EPA disagrees with a state's recommended designations. In particular, the Administrator must provide the state with 120 days to demonstrate why any proposed modifications to the state's recommendation are inappropriate. The EPA notified Texas and Colorado on or about May 24, 2021, that the Agency intended to modify the states' recommendations and provided intended designations revisions. Although not required by section 107(d)(2)(B) of the CAA, the EPA also provided a 30-day public comment period on the designation recommendations from Texas and Colorado and the EPA's intended designations revisions addressed in the 120-day letters.

VII. What air quality data has the EPA used to designate the remanded areas for the 2015 ozone NAAQS?

For the two remanded counties and associated nonattainment areas addressed in this action, as well the 14 remanded counties addressed in a previous action, the EPA has re-evaluated the designations under a uniform, nationwide analytical approach in considering the specific facts and circumstances of the areas using data and information available at the time of the April 30, 2018, final designations action. The EPA has primarily based the revised final ozone designations in this action on air quality monitoring data from the years 2014–2016, which were the most recent data that states were required to certify at the time the EPA notified states of its intended designations and any intended modifications to their recommendations in December 2017. Under 40 CFR 58.16, states are required to report all monitored ozone air quality data and associated quality assurance data within 90 days after the end of each quarterly reporting period, and under 40 CFR 58.15(a)(2), states are required to submit annual summary reports and a data certification letter to the EPA by May 1 for ozone air quality data collected in the previous calendar year. Thus, at the time of the 120-day letters, the most recent certification obligation was for air quality data from 2016. In the 120-day notification letters to states, the EPA indicated that for the EPA to consider air quality data for the period 2015–2017 in the final designation decisions for any area, a state must submit certified, quality assured 2015–2017 air quality monitoring data for the area to the EPA by February 28, 2018. Colorado, Texas, and New Mexico did not choose to submit early certified air quality

[4] Any reference to ''counties'' in this action also includes non-county administrative or statistical areas that are comparable to counties. Louisiana parishes; the organized boroughs of Alaska; the District of Columbia; and the independent cities of the states of Virginia, Maryland, Missouri, and Nevada are equivalent to counties for administrative purposes. Alaska's Unorganized Borough is divided into 10 census areas that are statistically equivalent to counties. As of 2017, there are currently 3,142 counties and county-equivalents in the United States.

monitoring data. Therefore, the April 30, 2018 initial designations for these states were based on air quality data from 2014–2016.

The EPA's reliance on only information available at the time of the April 30, 2018, designations action to support the revised designations in this **Federal Register** document is reasonable in light of the circumstances. The CAA does not specify what data the Agency must rely on in re-promulgating designations upon remand from a court. As such, the EPA's reasonable reliance on data available on April 30, 2018, reflects the EPA's dedication to national consistency and the specific direction of the court in *Clean Wisconsin:* ''to issue revised designations as expeditiously as practicable'' in responding to the remand.[5]

Section 107(d) of the CAA lays out a particular timeline for designations decisions to be made, triggered from the promulgation date of a NAAQS. For the 2015 ozone NAAQS, the designation of every area of the country, apart from those remanded to the Agency, relied on the existing record.[6] As the D.C. Circuit stated in previous cases reviewing the EPA's designations decisions, ''inconsistency is the hallmark of arbitrary agency action.'' [7] Relying on the data available to the Agency at the time of the April 2018 designations action would prevent inconsistent treatment between the remanded counties and every other area of the country.

In addition, both our previous action responding to the Court remand for 14 counties and this action expand the boundaries of existing nonattainment areas but do not create any new nonattainment areas. If it is important to treat areas across the country consistently, it is that much more important that the EPA treat *different portions of the same nonattainment area* consistently. The EPA received some comments on this approach; further explanation for the EPA's decision to rely on the data available on April 30, 2018, appears in the EPA's Response to Comments document, available in the electronic docket for this action (*www.regulations.gov,* docket number EPA–HQ–OAR–2017–0548) and at the EPA's Ozone Designations web page (*https://www.epa.gov/ozone-designations*).

The D.C. Circuit's direction to act ''as expeditiously as practicable'' also weighs in favor of using information available on April 30, 2018. Gathering and analyzing new data would necessarily have taken longer, because much of the data the EPA generally relies upon in its designations decision-making process is obtained outside the Agency, including from states.

VIII. What are the ozone air quality classifications and implementation dates?

In accordance with CAA section 181(a)(1), each area designated as nonattainment for the ozone NAAQS is classified by operation of law when designated by the EPA. Under Subpart 2 of part D of title I of the CAA, state planning and emissions control requirements for ozone are determined, in part, by a nonattainment area's classification. The ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years).[8] The possible classifications are Marginal, Moderate, Serious, Severe, and Extreme. Nonattainment areas with a ''lower'' classification have ozone levels that are closer to the standard than areas with a ''higher'' classification. Areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. On March 9, 2018 (83 FR 10376), the EPA published the Classifications Rule that establishes how the statutory classifications will apply for the 2015 ozone NAAQS, including the air quality thresholds for each classification category. Each nonattainment area's design value, based on the then-most recent 3 years of certified air quality monitoring data, is used to establish the classification for the area.

The regulatory tables included at the end of this action for the Denver Metro/North Front Range, CO nonattainment area and the El Paso-Las Cruces, TX–NM nonattainment area provide the classification for the designated nonattainment area for the 2015 ozone NAAQS based on the design value for the area and the classification thresholds established in the Classification Rule. Both of these areas addressed in this **Federal Register** document are Marginal nonattainment areas.

As established in the final implementing regulations for the 2015 ozone NAAQS, nonattainment areas (including the areas subject to this final action) shall attain the 2015 standards as expeditiously as practicable but not later than the dates provided in Table 1 of 40 CFR 51.1303(a) expressed in years after the effective date of area designations, which was August 3, 2018 (83 FR 25776; June 4, 2018). The resulting attainment date for Marginal areas is not later than 3 years from the designation effective date, or August 3, 2021. Further, states with Marginal nonattainment areas have 2 years from the effective date of designation to submit state implementation plan (SIP) revisions addressing emissions inventories (required by CAA section 182(a)(1)) and emissions statement regulations (CAA section 182(a)(3)(B)) (83 FR 62998, 63000; December 6, 2018). *See* also 40 CFR 51.1315. The resulting emissions inventory and emissions statement SIP revisions were due August 3, 2020. The August 3, 2021, Marginal area attainment date still applies for the areas subject to this final action, inclusive of the revised nonattainment boundaries. As with the other 14 remanded counties, the August 3, 2020, SIP submission requirements apply to the entirety of Weld County, Colorado. The EPA expects states with areas subject to this final action to work with their respective EPA Regional office to submit any necessary supplements or revisions to fulfill the Marginal area SIP revision requirements associated with the nonattainment boundaries in this final action as expeditiously as practicable.

However, the EPA recognizes that Texas is in a unique position among the states affected by the D.C. Circuit's remand. For all of the other nonattainment area boundaries modified either in this document or in the previous action (86 FR 31438; June 14, 2021) in response to the court's decision, the relevant states already had counties or portions of counties as a part of those nonattainment areas, and thus already had an August 3, 2020, deadline to submit SIPs meeting the requirements for a Marginal nonattainment area. However, no portion of Texas was already designated nonattainment as a part of the Doña Ana, New Mexico area; as such, Texas had no notice that it should prepare a Marginal area SIP submission for that area. Given the lack of prior notice, the EPA believes it is reasonable to provide Texas with a deadline of December 30, 2022 to

[5] *Clean Wisconsin,* 964 F.2d at 1176.

[6] As is discussed earlier in this section, almost every designation relied on monitored 2014–2016 design values. The few exceptions were for states that early-certified 2015–2017 data in accordance with the Designation Guidance.

[7] *Catawba County* v. *EPA,* 571 F.3d 20, 51 (D.C. Cir. 2009); *see also Mississippi Comm'n* v. *EPA,* 790 F.3d 138, 160 (D.C. Cir. 2015).

[8] The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual 4th highest daily maximum 8-hour average ozone concentration. *See* 40 CFR part 50, Appendix U.

submit a SIP submission that meets all the Marginal nonattainment area planning requirements for the newly expanded El Paso-Las Cruces Texas-New Mexico nonattainment area. *See* CAA section 301(a)(1).

Setting a separate deadline for El Paso's SIP submission is not at odds with the EPA's decision to keep a consistent attainment date for the entirety of the El Paso-Las Cruces Texas-New Mexico nonattainment area, or CAA section 182(j). The CAA requires that states take ''reasonable'' steps to coordinate planning efforts for joint nonattainment areas. Providing additional time to allow Texas to make a Marginal area submission will not interfere, and could better serve, future coordination on planning efforts for the entire nonattainment area. Other parts of the CAA also provide support for this final action's decisions regarding attainment dates and SIP submission deadlines. Section 182(i) of the CAA allows the Administrator to adjust SIP deadlines but not attainment dates upon mandatory reclassification of certain ozone nonattainment areas. In addition, areas subject to Marginal area requirements are not required to ''plan'' for attainment in the same way as areas classified Moderate and above. The primary substantive obligations associated with a Marginal classification are the requirement to submit an emissions inventory and the requirement that new sources in the area must implement nonattainment new source review. Neither requirement is integrally related to attainment planning—they are not submitted to demonstrate how the area will attain or make reasonable further progress towards attainment, and they are not suspended if the area is attaining.

Setting a reasonable future deadline for SIP submissions is consistent with the EPA's past practice and D.C. Circuit precedent. On January 4, 2013, the D.C. Circuit remanded the EPA's 2007 $PM_{2.5}$ Implementation Rule,[9] finding that the EPA had applied the incorrect set of implementation provisions within the CAA, including a series of deadlines for SIP submissions.[10] Upon remand, the deadlines that should have applied to the relevant areas were in the past. Given that, the EPA took final action in 2014 to set up ''relatively brief but reasonable'' deadlines for required SIP submissions. While the action changed the submission deadlines, it also left in place the attainment dates that had occurred in the past for the relevant nonattainment areas. Petitioners challenged the EPA's rule establishing future SIP submittal deadlines on the basis that the CAA established SIP submittal deadlines, those should have applied based on the D.C. Circuit's earlier decision, and the EPA lacked discretion to change those deadlines. The EPA's rule establishing new, future SIP submittal deadlines in this circumstance was upheld by the D.C. Circuit in *WildEarth Guardians* v. *EPA,* 830 F.3d 529 (D.C. Cir. 2016) (finding that the EPA acted within its authority in novel circumstances where a SIP submission deadline passed without states' awareness due to a remanded action).

The EPA recognizes that the Agency did not specifically provide notice in its June 14, 2021 intended designations that Texas's Marginal area SIP submission deadlines would be extended from August 3, 2020 to December 30, 2022. However, as discussed in the previous section, under CAA section 107(d)(2)(B), designations actions are specifically exempted from the notice and comment requirements of the APA. *See* CAA section 172(b) (requiring the Administrator to establish a schedule for SIP requirements at the time the Administrator promulgates a nonattainment designation). In addition, the Agency did not specify what deadline would apply, and numerous commenters addressed the issue in comments, suggesting that the Agency in fact provided enough notice on the issue that it is appropriate to finalize without additional notice. As such, the EPA does not believe that a more specific notice was necessary to extend Texas's SIP submission deadlines.

Even if additional notice were required, the EPA would have good cause to waive such a requirement to finalize an extension of Texas's SIP submission deadlines for the revised additional portion of the El Paso-Las Cruces TX–NM nonattainment area, as providing an additional notice and comment period would be impracticable and contrary to the public interest. *See* APA Section 553(b)(B). Upon the effective date of this final action, without a finalized extension of Texas's SIP deadline, the EPA would immediately be vulnerable to deadline litigation for the Agency's failure to issue findings of failure to submit under CAA section 107(k)(1)(B)—for a state that until today was not required to submit anything to the Agency. And, the Agency does not have time, given the deadlines for other statutorily-required actions and the *Clean Wisconsin* court's direction for the EPA to act as expeditiously as practicable, to wait to finalize these revised designations for a full notice-and-comment process on this lone issue, which is a small part of a large and complex series of Agency actions. Further, a specific, brief, and reasonable deadline set in the future provides the state and stakeholders with certainty and the ability to develop and submit the SIP revisions at issue on a timely basis, rather than complications and potential mandatory duty deadline suit litigation that could ensue if the EPA established a submittal deadline that had already lapsed.

IX. Environmental Justice (EJ) Considerations

Consideration of EJ concerns is consistent with an Administrator directive and presidential executive orders. On April 7, 2021, the Administrator directed the EPA offices to take immediate and affirmative steps to incorporate EJ considerations into the regulatory development processes.[11] The EPA has defined environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.'' [12] The Administrator's directive came as part of implementing the Biden-Harris Administration's executive order (E.O. 13985, 86 FR 7009, January 25, 2021) directing all federal agencies to embed equity into their programs and services to ensure the consistent and systematic fair, just, and impartial treatment of all individuals, including those who belong to underserved communities that have been denied such treatment.[13] E.O. 13985 defines the term ''underserved communities'' as referring to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic,

[9] Final Clean Air Fine Particle Implementation Rule, 72 FR 20585 (April 25, 2007).

[10] Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 p.m.2.5 NAAQS, 79 FR 31,566 (June 2, 2014).

[11] Message from the EPA Administrator, Our Commitment to Environmental Justice (issued April 7, 2021) at *https://www.epa.gov/sites/production/files/2021-04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf.*

[12] *See https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[13] ''Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (E.O. 13985, issued January 20, 2021) at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

social, and civic life. The new E.O. 13985 is an update to E.O. 12898 (''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' 59 FR 7629, February 16, 1994) that directed federal agencies to focus on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities.[14] Finally, in a subsequent executive order addressing the global climate crisis (E.O. 14008), the Biden-Harris Administration formalized their commitment to make EJ a part of the mission of every agency by directing federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.[15]

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This action for El Paso County, Texas and Weld County, Colorado, revises certain designation determinations for the 2015 ozone NAAQS that were identified in the July 10, 2020, court remand. Since these two areas have air quality that do not meet the NAAQS, or have been determined to contribute emissions to such areas, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

As part of this area designation action, the EPA evaluated a number of EJ issues, including the demographics of the impacted area, higher susceptibility in response to pollution exposure, and capacity to participate in decision making, as described in this section. Specifically, the EPA analyzed certain key demographics for both El Paso County, Texas, and Weld County Colorado, as part of the EJ evaluation conducted for this rulemaking effort. Additionally, the EPA provided the public with information about the air quality in the relevant areas of the country and provided adequate opportunity for public comment on the EPA's proposal.

Demographics of impacted area. The EPA evaluated the 2019 census data available for El Paso County, Texas and Weld County, Colorado to identify key demographic indicators. These include the percent of the population identifying as people of color [16] as well as the percent of the population identifying as low income.[17] In El Paso County, Texas,[18] 91.1 percent of the population identify as people of color (mostly as Hispanic or Latino) and 18.8 percent identify as low income. By comparison, 39.7 percent of the population of the state of Texas and 18.5 percent of the nation identify as Hispanic or Latino. In Weld County, Colorado,[19] 37.6 percent of the population identify as people of color and 8.4 percent of the population identify as low income.[20]

Higher susceptibility in response to pollution exposure. As discussed in the EPA's EJ Technical Guidance, people of color, low-income populations, and indigenous peoples often experience greater exposure and disease burdens than the general population as a whole, which can increase their susceptibility to adverse health effects from environmental stressors.[21] We recognize also that underserved communities can experience reduced access to health care, nutritional, and fitness resources, further increasing their susceptibility. People susceptible to the effects of degraded ambient air include people with asthma, children, older adults, and people who are active outdoors, especially outdoor workers. The resulting adverse respiratory effects can include, *e.g.,* difficulty in breathing, airway inflammation and damage, aggravation of lung diseases, and increased frequency of asthma attacks.[22] Exposure to elevated concentrations of nitrogen dioxide (a type of NO_X compound and ozone precursor) can produce similar adverse health effects to ozone.[23] VOC emissions can include listed Hazardous Air Pollutants (HAPs) that cause or may cause serious health problems such as cancer, and noncancer effects on the lungs and other parts of the respiratory system; on the immune, nervous and reproductive systems; and to organs such as the heart, liver and kidneys.[24]

Capacity to participate in decision making. The inability to participate in the environmental decision-making process may contribute to disproportionate adverse impacts for underserved communities. Obstacles to participation may include lack of trust; availability or lack of information; language barriers and other socio-cultural issues; inability to access available communication channels; and limited capacity to access technical and legal resources.

On June 14, 2021, the EPA published a Notice of Availability in the **Federal Register**, providing EPA's intended designations for the remanded El Paso and Weld Counties and provided a 30-day public comment period. The EPA received comments from a wide range of stakeholders to include small business, industry, environmental groups, governmental planning agencies, county commissioners and the public at large from both areas. All comments received and responses are in the docket for this action.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it responds to the CAA

[14] *See https://www.epa.gov/sites/production/files/2015-02/documents/exec_order_12898.pdf.*

[15] ''Executive Order on Tackling the Climate Crisis at Home and Abroad'' (E.O. 14008, issued January 27, 2021) at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/.*

[16] By percent identifying as people of color we mean the percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino. That is, all people other than non-Hispanic white-alone individuals. The word ''alone'' in this case indicates that the person is of a single race, not multiracial. Source: The Census Bureau's American Community Survey 5-year summary estimates.

[17] Following the Office of Management and Budget's (OMB) Statistical Policy Directive 14, the Census Bureau uses a set of money income thresholds that vary by family size and composition to determine who is in poverty. If a family's total income is less than the family's threshold, then that family and every individual in it is considered in poverty. The official poverty thresholds do not vary geographically, but they are updated for inflation using Consumer Price Index (CPI–U). The official poverty definition uses money income before taxes and does not include capital gains or noncash benefits (such as public housing, Medicaid, and food stamps). Source: How the Census Bureau Measures Poverty.

[18] The Census Bureau population estimate on July 1, 2019, for El Paso County, Texas from which this data derives was 839,238.

[19] The Census Bureau population estimate on July 1, 2019, for Weld County, Colorado from which this data derives was 324,492.

[20] The percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino. That is, all people other than non-Hispanic white-alone individuals. The word ''alone'' in this case indicates that the person is of a single race, not multiracial. Source: The Census Bureau's American Community Survey 5-year summary estimates.

[21] ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' Section 4 (June 2016) at *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

[22] *See https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution.*

[23] *See https://www.epa.gov/no2-pollution/basic-information-about-no2.*

[24] *See https://www.epa.gov/national-air-toxics-assessment/nata-frequent-questions#background1.*

requirement to promulgate air quality designations after promulgation of a new or revised NAAQS.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action fulfills the non-discretionary duty for the EPA to promulgate air quality designations after promulgation of a new or revised NAAQS and does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the federal government and the states for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. There was one Federally Recognized Tribe that was potentially affected by this action, the Ysleta del Sur Pueblo. Consistent with the EPA Policy on Coordination and Consultation with Indian Tribes, by letter dated May 26, 2021, the EPA offered the Ysleta del Sur Pueblo the opportunity for consultation and informed the tribe of the designations process and the intended designation for El Paso County, TX. The tribe did not request any consultation.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is contained in Section IX of this preamble, ''Environmental Justice Concerns.''

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the Agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, ''if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves the EPA complete discretion whether to invoke the exception in (ii).

This final action designating areas for the 2015 ozone NAAQS is ''nationally applicable'' within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[25] This final action establishes designations for two areas across the U.S. for the 2015 ozone NAAQS, located in two states, in two EPA regions, and in two different federal judicial circuits.[26] This final action applies a uniform, nationwide analytical method and interpretation of CAA section 107(d)(1) to these areas across the country in a single final action, and the final action is based on this common core of determinations. More specifically, this final action is based on a determination by the EPA to evaluate areas nationwide under a common five factor analysis in determining whether areas were in violation of or contributing to an area in violation of the 2015 ozone NAAQS at the time of the April 2018 designations final action. For example, the EPA's revised designations are based on a determination by the EPA to reconsider the information and data in the record and available at the time of the designations action signed April 2018, rather than considering newer air quality information.

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal**

[25] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

[26] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

Register. Under section 307(b)(1) of the CAA, any petitions for review of this final action must be filed in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of these final actions does not affect the finality of the actions for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such actions.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 81 as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.306, the table titled ''Colorado—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' is amended by:

■ a. Under the heading ''Denver Metro/North Front Range, CO'' removing the entry for ''Weld County (part)'' and adding in its place an entry for ''Weld County'';

■ b. Removing the entry ''Weld County (part) remainder'' after the entry for ''Washington County''.

The addition reads as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Denver Metro/North Front Range, CO	.....	Nonattainment		Marginal.
* * * *	*	*	*	*
Weld County	December 30, 2021 [3].			
* * * *	*	*	*	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

[3] EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the associated implementation dates for the overall nonattainment area (*e.g.,* the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

* * * * *

■ 3. In § 81.332, the table titled ''New Mexico—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' is amended by removing the entry ''Doña Ana County (Sunland Park Area), NM'' and adding the entry ''El Paso-Las Cruces, TX–NM'' in its place to read as follows:

§ 81.332 New Mexico.

* * * * *

NEW MEXICO—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
El Paso-Las Cruces, TX–NM	.....	Nonattainment		Marginal.
* * * *	*	*	*	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

* * * * *

■ 4. In § 81.344, the table titled ''Texas—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' is amended as follows:

■ a. Adding the entry ''El Paso-Las Cruces, TX–NM'' above the entry ''Houston-Galveston-Brazoria, TX'';

■ b. Adding the entry ''El Paso County'' under the new entry ''El Paso-Las Cruces, TX–NM'';

■ c. Under the entry ''Rest of State'' removing the entry ''El Paso County''.

The revisions and addition read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—2015 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * * *	*	*	*	
El Paso-Las Cruces, TX–NM		Nonattainment		Marginal.
El Paso County	December 30, 2021 [3].			
* * * *	*	*	*	

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.
[2] This date is August 3, 2018, unless otherwise noted.
[3] EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the associated August 3, 2021 attainment date remains unchanged regardless of this later designation date. EPA established a later state implementation plan submission date for El Paso County.

* * * * *

[FR Doc. 2021–25451 Filed 11–29–21; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1752–CN2 and CMS–1762–CN2]

RINs 0938–AU44 and 0938–AU56

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2022 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Changes to Medicaid Provider Enrollment; and Changes to the Medicare Shared Savings Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors in the final rule that appeared in the August 13, 2021, **Federal Register** as well as additional typographical errors in a related correcting amendment that appeared in the October 20, 2021, **Federal Register**. The final rule was titled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2022 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Changes to Medicaid Provider Enrollment; and Changes to the Medicare Shared Savings Program''.

DATES:

Effective date: This correcting document is effective on November 29, 2021.

Applicability date: This correcting document is applicable for discharges beginning October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Allison Pompey, (410) 786–2348, New Technology Add-On Payment Issues.

SUPPLEMENTARY INFORMATION:

I. Background

In the final rule which appeared in the August 13, 2021, **Federal Register** (86 FR 44774) entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2022 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Changes to Medicaid Provider Enrollment; and Changes to the Medicare Shared Savings Program'' (hereinafter referred to as the FY 2022 IPPS/LTCH PPS final rule), there were a number of technical and typographical errors. To correct the typographical and technical errors in the FY 2022 IPPS/LTCH PPS final rule, we published a correcting document that appeared in the October 20, 2021, **Federal Register** (86 FR 58019) (hereinafter referred to as the FY 2022 IPPS/LTCH PPS correcting amendment).

In FR Doc. 2021–22724 of October 20, 2021 (86 FR 58019), there was an inadvertent omission and typographical error that are identified and corrected in this correcting document. This document also corrects additional typographical errors in FR Doc. 2021–16519 of August 13, 2021 (86 FR 44774). The corrections in this correcting document are applicable to discharges occurring on or after October 1, 2021, as if they had been included in the document that appeared in the August 13, 2021, **Federal Register** .

II. Summary of Errors

A. Summary of Errors in the FY 2022 IPPS/LTCH PPS Final Rule

On page 44974, in the table displaying the continuation of technologies approved for FY 2021 new technology add-on payments and still considered new for FY 2022, we are correcting inadvertent typographical errors in the coding used to identify cases involving the use of the BAROSTIM NEO™ System that are eligible for new technology add-on payments.

B. Summary of Errors in the FY 2022 IPPS/LTCH PPS Correcting Document

On page 58023 in section IV.A. of the FY 2022 IPPS/LTCH PPS correcting amendment, we inadvertently omitted corrections to pages 45133, 45150, and 45157 of the FY 2022 IPPS/LTCH PPS final rule, as summarized on page 58019 in section II.A. of the FY 2022 IPPS/LTCH PPS correcting amendment. We are also correcting an inadvertent typographical error in the coding used to identify cases involving the use of RECARBRIO™ that are eligible for new technology add-on payments.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a

period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this final rule correction does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects typographical errors in the FY 2022 IPPS/LTCH PPS final rule and the FY 2022 IPPS/LTCH PPS final rule correcting amendment, but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this final rule correction is intended to ensure that the information in the FY 2022 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2022 IPPS/LTCH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This final rule correction is intended solely to ensure that the FY 2022 IPPS/LTCH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements. Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this final rule correction because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2022 IPPS/LTCH PPS final rule accurately reflects our policies.

IV. Correction of Errors

A. Correction of Errors in the Final Rule

In FR Doc. 2021–16519 of August 13, 2021(86 FR 44774), we are making the following corrections:

1. On page 44974, in the table titled ''Continuation of Technologies Approved for FY 2021 New Technology Add-On Payments and Still Considered New for FY 2022, the entry in row 3 is corrected to read as follows:

	Technology	FDA Newness/Start Date	NTAP Start Date	NTAP Status for FY 2022	Previous Final Rule Citations	Maximum NTAP Amount for FY 2022	Coding Used to Identify Cases Eligible for NTAP
*******							
3.	*BAROSTIM NEO™ System*	*08/16/2019*	*10/01/2020*	*Continue because 3-year anniversary date (8/16/2022) will occur in the second half of FY 2022*	(85 FR 58716 through 58717)	$22,750	0JH60MZ in combination with 03HK3MZ or 03HL3MZ
*******							

B. Correction of Errors in the Correcting Document

In FR Doc. 2021–22724 of October 20, 2021 (86 FR 58019), we are making the following corrections:

1. On page 58023, lower half of the page (following the table), third column:

a. Preceding the beginning of the partial paragraph (before item 10), the paragraph is corrected by adding items 7 through 9 to read as follows:

''7. On page 45133, top of the page,

a. First column, partial paragraph,

(1) Line 4, the figure ''$31,500'' is corrected to read ''$63,000''.

(2) Line 5, the figure ''$10,500'' is corrected to read ''$21,000''.

b. Second column, partial paragraph, last line, the figure ''$20,475'' is corrected to read ''$40,950''.

8. On page 45150, second column, last full paragraph, lines 27 through 31, the phrase ''in combination with one of the following ICD–10–CM codes: D65 (Disseminated intravascular coagulation) or D68.2 (Hereditary deficiency of other clotting factors).'' is corrected to read ''in combination with one of the following ICD–10–CM codes: D62 (Acute posthemorrhagic anemia), D65 (Disseminated intravascular coagulation), D68.2 (Hereditary deficiency of other clotting factors), D68.4 (Acquired coagulation factor deficiency) or D68.9 (Coagulation defect, unspecified).''.

9. On page 45157, top third of the page, first column, first partial paragraph, last line, the phrase, ''technology group 6).'' is corrected to read ''technology group 6) in combination with the following ICD–10–CM codes: Y95 (Nosocomial condition) and one of the following: J14 (Pneumonia due to Hemophilus influenzae) J15.0 (Pneumonia due to Klebsiella pneumoniae), J15.1 (Pneumonia due to Pseudomonas), J15.5 (Pneumonia due to Escherichia coli), J15.6 (Pneumonia due to other Gram-negative bacteria), J15.8 (Pneumonia due to other specified bacteria), or J95.851 (Ventilator associated pneumonia) and one of the following: B96.1 (Klebsiella pneumoniae [K. pneumoniae] as the cause of diseases classified elsewhere), B96.20 (Unspecified Escherichia coli [E. coli] as the cause of diseases classified elsewhere), B96.21 (Shiga toxin-producing Escherichia coli [E. coli] [STEC] O157 as the cause of diseases classified elsewhere), B96.22 (Other specified Shiga toxin-producing Escherichia coli [E. coli] [STEC] as the cause of diseases classified elsewhere), B96.23 (Unspecified Shiga toxin-producing Escherichia coli [E. coli] [STEC] as the cause of diseases classified elsewhere, B96.29 (Other Escherichia coli [E. coli] as the cause of diseases classified elsewhere), B96.3 (Hemophilus influenzae [H. influenzae] as the cause of diseases classified elsewhere, B96.5 (Pseudomonas (aeruginosa) (mallei) (pseudomallei) as the cause of diseases classified elsewhere), or B96.89 (Other specified bacterial agents as the cause of diseases classified elsewhere).''

b. Within the partial paragraph (item 10), line 8, the code number ''J14.0'' is corrected to read ''J14''.

Karuna Seshasai,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2021–26069 Filed 11–29–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201 and 237

[Docket DARS–2021–0023]

RIN 0750–AK77

Defense Federal Acquisition Regulation Supplement: Peer Reviews of Contracts for Supplies and Services (DFARS Case 2019–D037)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify internal processes for the conduct of peer reviews.

DATES: Effective November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Trujillo, telephone 571–372–6102.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to revise the policies at DFARS 201.170 for the conduct of peer reviews by the Office of the Principal Director, Defense Pricing and Contracting (DPC). The rule removes the requirement for DPC-led, preaward peer reviews of competitive procurements valued at $1 billion or more unless the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) is the milestone decision authority or unless USD(A&S) designates a competitive procurement as requiring a peer review, regardless of dollar value. Additionally, DoD components may request DPC-led peer reviews for competitive acquisitions valued below the $1 billion threshold. DPC will conduct the reviews upon approval by the Director, DPC (Contract Policy).

The threshold for DPC-led, preaward peer reviews of noncompetitive procurements is increased from $500 million to $1 billion. Additionally, the requirement for DPC-led peer reviews of noncompetitive procurements will include any other contract actions USD(A&S) designates as requiring a peer review, regardless of dollar value. DoD components may request DPC-led peer reviews for noncompetitive acquisitions valued below the $1 billion threshold. DPC will conduct the reviews upon approval by the Director, DPC (Price, Cost and Finance).

The rule includes clarification of the types of contract actions included in preaward peer reviews for noncompetitive procurements and guidance on how to identify the contract actions that are subject to preaward peer reviews for competitive and noncompetitive procurements. DoD components establish procedures to conduct preaward peer reviews of competitive and noncompetitive procurements that do not meet the criteria for a DPC-led review. The rule also removes DPC-led, postaward peer reviews of acquisitions for services from the DFARS, and the cross-reference at DFARS 237.102–76 has been removed.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule concerns DoD's internal review processes and does not have a significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create or revise any solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 201 and 237

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201 and 237 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Revise section 201.170 to read as follows:

201.170 Peer reviews.

(a) *DPC peer reviews.* (1) The Office of the Principal Director, Defense Pricing and Contracting (DPC), using the procedures at PGI 201.170, will organize teams of reviewers and facilitate peer reviews for solicitations and contracts as follows:

(i) DPC will conduct the preaward peer reviews for competitive procurements prior to the three phases of the acquisition (see PGI 201.170–2(a)) for all procurements with an estimated value of $1 billion or more under major defense acquisition programs for which the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) is the milestone decision authority or USD(A&S) designates as requiring a peer review regardless of value. DoD components may request DPC-led peer reviews for acquisitions valued below the $1 billion threshold. DPC will conduct these reviews upon approval by the Director, Defense Pricing and Contracting (Contract Policy).

(ii) DPC will conduct the preaward peer reviews for noncompetitive procurements prior to the two phases of the acquisition (see PGI 201.170–2(b)) for contract actions, *e.g.,* new contracts, modifications to existing contracts, requests for equitable adjustment, claims valued at $1 billion or more, or for any other contract action USD(A&S) designates as requiring a peer review regardless of value. DoD components may request DPC-led peer reviews for contract actions valued below the $1 billion threshold. DPC will conduct these reviews upon approval by the Director, Defense Pricing and Contracting (Price, Cost and Finance).

(iii) Use the following criteria to identify actions that are subject to peer review (see also FAR 1.108(c), Dollar thresholds):

(A) If the not-to-exceed amount for an undefinitized contract action or an unpriced change order exceeds the peer review threshold, then the resultant definitization modification(s) will be subject to peer review regardless of actual performance up to the point of definitization.

(B) For indefinite delivery indefinite quantity (IDIQ) contracts that will establish pricing terms that apply to orders, use the total maximum dollar value for purposes of the peer review threshold. IDIQ contracts that will not establish pricing terms in the basic contract are not subject to peer review, but individual orders that exceed the threshold are subject to peer review.

(C) For noncompetitive contract actions, use the greater of the following when considering the firm requirement for all supplies or services:

(*1*) The approved Government objective amount.

(*2*) The contractor proposed amount.

(2) To facilitate planning for peer reviews, the military departments and defense agencies shall provide a rolling annual forecast of acquisitions that will be subject to DPC peer reviews at the end of each quarter (*i.e.,* March 31; June 30; September 30; December 31).

(i) Military departments and defense agencies shall submit quarterly forecasts for competitive peer reviews to the Director, Defense Pricing and Contracting (Contract Policy), at *osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.*

(ii) Military departments and defense agencies shall submit quarterly forecasts for noncompetitive peer reviews to the Director, Defense Pricing and Contracting (Price, Cost and Finance), at *osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil.*

(b) *Component peer reviews.* The military departments and defense agencies shall establish procedures for—

(1) Preaward peer reviews of solicitations for competitive procurements not subject to paragraph (a)(1)(i) of this section; and

(2) Preaward peer reviews of noncompetitive procurements not subject to paragraph (a)(1)(ii) of this section.

PART 237—SERVICE CONTRACTING

237.102–76 [Removed and Reserved]

■ 3. Remove and reserve section 237.102–76.

[FR Doc. 2021–25733 Filed 11–29–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210325–0071; RTID 0648–XB612]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2021 Closure of the Atlantic Herring Fishery

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

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the Atlantic herring fishery and implementing a 2,000-lb (907.2-kg) possession limit for herring in all Herring Management Areas. This is required because NMFS projects that herring catch will reach 95 percent of the annual catch limit before

the end of the fishing year. This action is intended to prevent overharvest of herring, which would result in additional catch limit reductions in a subsequent year.

DATES: Effective 00:01 hr local time, November 25, 2021, through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, (978) 281–9196.

SUPPLEMENTARY INFORMATION: The Regional Administrator of the Greater Atlantic Regional Office monitors Atlantic herring fishery catch based on vessel and dealer reports, state data, and other available information. Regulations at 50 CFR 648.201(a)(1)(ii) require that we close the herring fishery and implement a 2,000-lb (907.2-kg) possession limit for herring beginning on the date that catch is projected to reach 95 percent of the annual catch limit (ACL).

Based on vessel reports, dealer reports, and other available information, the Regional Administrator projects that the herring fleet has caught 95 percent of the herring ACL by November 23, 2021. Therefore, effective 00:01 hr local time November 25, 2021, through December 31, 2021, a person may not attempt or do any of the following: Fish for; possess; transfer; purchase; receive; land; or sell more than 2,000 lb (907.2-kg) of herring per trip or more than once per calendar day.

Vessels that enter port before 00:01 hr local time on November 25, 2021, may land and sell more than 2,000 lb (907.2 kg) of herring from that trip, provided that catch is landed in accordance with state management measures and the herring were not caught in a Management Area already subject to a 2,000-lb (907.2-kg) possession limit.

Also effective 00:01 hr local time, November 25, 2021, through 24:00 hr local time, December 31, federally permitted dealers may not attempt or do any of the following: Purchase; receive; possess; have custody or control of; sell; barter; trade; or transfer more than 2,000 lb (907.2 kg) of herring per trip or calendar day from a vessel, unless it is from a vessel that enters port before 00:01 hr local time on November 25, 2021, catch is landed in accordance with state management measures, and the herring were not caught in a Management Area already subject to a 2,000-lb (907.2-kg) possession limit.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because it is unnecessary, contrary to the public interest, and impracticable. Ample prior notice and opportunity for public comment on this action has been provided for the required implementation of this action. The requirement to implement this fishery closure was developed by the New England Fishery Management Council using public meetings that invited public comment on the measures when they were developed and considered along with alternatives. Further, the regulations requiring NMFS to implement this fishery closure also were subject to public notice and opportunity to comment. Herring fishing industry participants monitor catch closely and anticipate a potential fishery closure as the catch total approaches the ACL. The regulation provides NMFS with no discretion and is designed for implementation as quickly as possible to prevent catch from exceeding limits designed to prevent overfishing while allowing the fishery to achieve optimum yield.

The 2021 Atlantic herring fishing year began on January 1, 2021. Data indicating that the Atlantic herring fleet will have landed at least 95 percent of the 2021 ACL only recently became available. High-volume catch and landings in this fishery can increase total catch relative to the ACL quickly, especially in this fishing year where catch limits are unusually low. If implementation of this fishery closure is delayed to solicit prior public comment, the 2021 herring ACL will likely be further exceeded; thereby undermining the conservation objectives of the Atlantic Herring Fishery Management Plan (FMP). When the ACL is exceeded, the excess must be deducted from a future ACL and reduces future fishing opportunities. The public expects these fishery closure actions to occur in a timely way consistent with the FMP's objectives. For the reasons stated above, NMFS also finds good cause to waive the 30-day delayed effectiveness in accordance with 5 U.S.C 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 24, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–26059 Filed 11–24–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022; RTID 0648–XB113]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Bering Sea subarea and Eastern Aleutian District (BS/EAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2021 total allowable catch (TAC) of Atka mackerel in the BS/EAI allocated to vessels participating in the BSAI trawl limited access sector fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 24, 2021, through 2400 hrs, A.l.t., December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Allyson Olds, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2021 TAC of Atka mackerel, in the BS/EAI, allocated to vessels participating in the BSAI trawl limited access sector fishery was established as a directed fishing allowance of 2,209 metric tons by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the BS/EAI by vessels participating in the BSAI trawl limited

access sector fishery. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Atka mackerel in the BS/EAI for vessels participating in the BSAI trawl limited access sector fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 22, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 24, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–26057 Filed 11–24–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022; RTID 0648–XB505]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from pot catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) and trawl catcher vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, pot catcher/processors, and American Fisheries Act (AFA) trawl catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2021 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective November 29, 2021, through 2400 hours, Alaska local time (A.l.t.), December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2021 Pacific cod TAC specified for pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI is 9,334 mt as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021).

The 2021 Pacific cod TAC specified for trawl catcher vessels in the BSAI is 24,704 mt as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021).

The 2021 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 3,944 mt as established by final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021) and reallocation (86 FR 47240, August 24, 2021).

The 2021 Pacific cod TAC specified for pot catcher/processors in the BSAI is 1,667 mt as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021).

The 2021 Pacific cod TAC specified for AFA trawl catcher/processors in the BSAI is 2,571 mt as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA will not be able to harvest 500 mt of the 2021 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*5*) and that trawl catcher vessels will not be able to harvest 3,054 mt of the 2021 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*).

Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS reallocates 500 mt of Pacific cod from pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA and 3,054 of Pacific cod from trawl catcher vessels. In accordance with § 679.20(a)(7)(iii)(A), the 3,554 mt of Pacific cod is reallocated as follows: 500 mt for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, 500 mt for pot catcher/processors, and 2,554 mt for AFA trawl catcher/processors.

The harvest specifications for 2021 Pacific cod included in final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021) and revision (86 FR 47240, August 24, 2021), are further revised as follows: 8,834 mt to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA, 21,650 mt to trawl catcher vessels, 4,444 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, 2,167 mt to pot catcher/processors, and 5,125 mt to AFA trawl catcher/processors.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 23, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 24, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–26064 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 227
Tuesday, November 30, 2021

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–TP–0012 and EERE–2020–TP–0012]

RIN 1904–AD86 and 1904–AE49

Energy Conservation Program: Test Procedure for External Power Supplies and Battery Chargers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of rescheduled public meeting.

SUMMARY: On November 2, 2021, the U.S. Department of Energy (''DOE'') published a supplemental notice of proposed rulemaking (''SNOPR''), and request for comment for the test procedure for external power supplies. The SNOPR announced a public meeting webinar would be held on December 15, 2021. Additionally, on November 23, 2021, DOE published a notice of proposed rulemaking (''NOPR''), and request for comment for the test procedure for battery chargers. This NOPR announced that the public meeting webinar scheduled for December 15, 2021, would also cover the battery charger test procedure proposal. To avoid a scheduling conflict with another public meeting webinar scheduled for that same date and time regarding the test procedure for cooking products, DOE is moving the public meeting webinar for the external power supply and battery charger test procedures to Monday, December 13, 2021.

DATES: The public meeting webinar regarding the SNOPR on the test procedure for external power supplies and the NOPR on the test procedure for battery chargers will now be held on December 13, 2021, from 12:30 p.m. until 4 p.m.

ADDRESSES: See the ''Public Participation'' section of this document for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. Interested persons are encouraged to submit comments via email or by using the Federal eRulemaking Portal at *www.regulations.gov.* Further information on how to submit written comments is provided in the **Federal Register** notices for the SNOPR on the test procedure for external power supplies and the NOPR on the test procedure for battery chargers.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3593. Email: *kristin.koernig@hq.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *michael.kido@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On November 2, 2021, the U.S. Department of Energy (''DOE'') published a supplemental notice of proposed rulemaking and request for comment for the test procedure for external power supplies. 86 FR 60376. The SNOPR announced a public meeting webinar would be held on December 15, 2021. Additionally, on November 23, 2021, DOE published a notice of proposed rulemaking and request for comment for the test procedure for battery chargers. 86 FR 66878. This NOPR announced that the public meeting webinar scheduled for December 15, 2021 would also cover the battery charger test procedure proposal.

On November 4, 2021, DOE published a notice of proposed rulemaking for the test procedure cooking products. This NOPR announced that a public meeting would be held on December 15, 2021. 86 FR 60974. Given that interested stakeholders may wish to attend both public meetings, DOE is rescheduling the public meeting that will cover the SNOPR on the test procedure for external power supplies and the NOPR on the test procedure for battery chargers.

Public Participation

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's websites: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=1* and *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=26.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Any person who has an interest in the topics addressed in either document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Requests should be sent by email to: *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in these rulemakings and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those

persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar, and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will allow time for prepared general statements by participants and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

Signing Authority

This document of the Department of Energy was signed on November 23, 2021, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 23, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–25977 Filed 11–29–21; 8:45 am]

BILLING CODE 6450–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3035

[Docket Nos. RM2017–1 and RM2022–2; Order No. 6043]

RIN 3211–AA29

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On January 3, 2019, the Commission adopted final rules to implement a dynamic formula-based approach for calculating the institutional cost contribution requirement for Competitive products, which is also referred to as ''the appropriate share,'' in accordance with the applicable statutory requirements. Subsequently, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in a decision issued in April 2020, remanded two issues to the Commission for clarification. This supplemental notice of proposed rulemaking addresses the issues identified by the D.C. Circuit, initiates the Commission's third 5-year review of the appropriate share, reissues the dynamic formula-based approach to calculating the appropriate share as a proposed rule, and invites public comment.

DATES: *Comments are due:* February 25, 2022; *Reply Comments are due:* March 25, 2022.

ADDRESSES: For additional information, Order No. 6043 can be accessed electronically through the Commission's website at *https://www.prc.gov.* Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Relevant Statutory Requirements

Section 3633(a)(3) of title 39 of the United States Code requires the Commission to ''ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.'' 39 U.S.C. 3633(a)(3). Section 3633(b) requires that the Commission revisit the appropriate share regulation at least every 5 years in order to determine if the minimum contribution requirement should be ''retained in its current form, modified, or eliminated.'' 39 U.S.C. 3633(b). In making such a determination, the Commission is required to consider ''all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.'' *Id.*

II. Background

Pursuant to section 3633(b), the Commission initiated Docket No. RM2017–1 for the purpose of conducting its second review of the appropriate share requirement since the enactment of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006). In its second review of the appropriate share, the Commission found that market conditions have changed since the PAEA's enactment and since the Commission's last review of the appropriate share.[1] Most significantly,

[1] *See* Docket No. RM2017–1, Order Adopting Final Rules Relating to the Institutional Cost Contribution Requirement for Competitive

the parcel delivery market has experienced a significant increase in demand, particularly over the last 5 years, due to the growing prevalence of e-commerce. Order No. 4963 at 5–12. This has led to steady increases in revenue and profit for all competitors in the market, as well as growth in competitive volumes and market share for the Postal Service. *Id.* In light of the changes described above, Order No. 4963 adopted a dynamic formula-based approach to determining the appropriate share and adopts related rule changes. *Id.* at 19–29.

However, Order No. 4963 was appealed by the United Parcel Service, Inc. and later remanded to the Commission for further consideration by the United States Court of Appeals for the District of Columbia Circuit. *United Parcel Serv., Inc.* v. *Postal Reg. Comm'n,* 955 F.3d 1038 (D.C. Cir. 2020). The court identified two major aspects of Order No. 4963 for the Commission to clarify on remand.

First, the court found that ''the Commission ha[d] not adequately explained how the statutory phrases 'direct and indirect postal costs attributable to [a particular competitive] product through reliably identified causal relationships' and 'costs . . . uniquely or disproportionately associated with any competitive products' can coincide.'' *Id.* at 1041, 1049. Second, the court found that ''in focusing narrowly on costs attributed to competitive products under [39 U.S.C.] 3633(a)(2), the Commission failed to discharge its responsibility under [39 U.S.C.] 3633(b) to 'consider . . . the degree to which *any* costs are uniquely or disproportionately associated with any competitive products.' '' *Id.* at 1042, 1049 (emphasis in original).

As part of Order No. 6043 and to provide necessary background concerning the issues identified by the court, Chapter IV of the Order details the evolution of postal costing. The current cost attribution methodology is designed to facilitate the attribution of costs to products to the greatest extent feasible. *See* Section IV.A.1. The Commission discusses the nature of institutional costs and why they cannot be allocated any further. *See* Section IV.B.4. With respect to Competitive product regulation, the Commission explains how section 3633, as implemented by the Commission, functionally results in a series of interrelated price floors. *See* Section IV.B. The price floor required by 39 U.S.C. 3633(a)(2), which requires each Competitive product to recover its product-level attributable costs, is included in the calculation of the price floor under 39 U.S.C. 3633(a)(1), which requires the recovery of both product- and group-level attributable costs for Competitive products collectively. *See* Section IV.B.2–3. This is because incremental costs [2] currently form the basis for both cost attribution and testing for cross-subsidization of Competitive products by Market Dominant products. *See id.* Therefore, the price floor under paragraph (a)(1) is currently equivalent to the total attributable cost of Competitive products collectively, which includes both individual product-level incremental costs as well as group-level costs that are incremental for Competitive products collectively. *See id.*

Chapter V discusses the regulatory scheme for Competitive products and amplifies the Commission's interpretation of 39 U.S.C. 3633(a)(3) and (b). Based on the PAEA's text, context, and structure, and as confirmed by its history, the purpose of the appropriate share provision is to ensure fair competition in the market for competitive postal services by protecting against any possibility that prices for the Postal Service's Competitive products (despite covering their attributable costs), might nevertheless be anticompetitively priced as a result of the Postal Service's institutional costs being jointly incurred by Market Dominant and Competitive products. *See* Section V.B. The Commission concludes that the primary focus of the appropriate share provision is to protect competition rather than to ensure a particular level of institutional cost coverage. *See id.*

The Commission clarifies that the ''uniquely or disproportionately associated'' standard appearing in 39 U.S.C. 3633(b) is broader than the ''reliably identified causal relationship'' standard for cost attribution under 39 U.S.C. 3631(b), such that the latter standard can be viewed as a subset of the former. *See id.* The Commission also, as directed on remand, considers the ''uniquely or disproportionately associated'' standard as applied to all accrued costs, which includes both attributable and institutional costs. *See id.* To rise to the level of being ''uniquely or disproportionately associated with any competitive products'' as contemplated by 39 U.S.C. 3633(b), the cost's relationship with the product or products must be *distinct* (uniquely associated) or *out of proportion* compared to the cost's relationship with other products or groups of products (disproportionately associated). *See id.*

Chapter VI applies the Commission's interpretation to ''all relevant circumstances,'' resulting in the Commission electing to maintain the dynamic formula-based approach to determining the appropriate share. Under 39 U.S.C. 3633(a)(3), the prices set for Competitive products must be marked up high enough to generate revenue above and beyond the costs attributable to Competitive products at the individual product and group level in order to also cover an appropriate share of the Postal Service's institutional costs. *See* Section VI.A.1. The price floor set by 39 U.S.C. 3633(a)(3) is made up of the appropriate share of institutional costs, as determined by the Commission, plus the attributable cost of Competitive products collectively. *See id.* Thus, this price floor set by 39 U.S.C. 3633(a)(3) is higher than both of the price floors set by 39 U.S.C. 3633(a)(1) and (a)(2). *See id.* Because all attributable costs are already included in the Competitive product price floor under 39 U.S.C. 3633(a)(3), the Commission declines to further account for them as part of the appropriate share. *See id.* Double-counting such costs would be economically unsound and would undermine the Postal Service's ability to effectively compete. *See id.*

The Commission applies the ''uniquely or disproportionately associated'' standard to all of the Postal Service's accrued costs. *See* Section VI.A. The Commission has analyzed the degree to which any costs are ''uniquely or disproportionately associated with any competitive products,'' (39 U.S.C. 3633(b)), and found there are no costs (other than those that also meet the definition of attributable costs) that can be identified to be ''uniquely or disproportionately associated with any competitive products.'' 39 U.S.C. 3633(b); *see* Section VI.A.1.

The nature of the residual costs which remain in the institutional cost category is such that the relationships between such costs and specific products or groups of products are not discernible or quantifiable. *See id.* There is no method to identify a portion of institutional costs as associated with Competitive products that would not be arbitrary and capricious. *See* Section VI.A.2. Moreover, employing arbitrary cost allocation methods would seriously

Products, January 3, 2019, at 4–12, 114–170 (Order No. 4963); *see* 84 FR 537 (January 1, 2019).

[2] Incremental costs are the variable and fixed costs that would be eliminated if a product or group of products were discontinued, or, equivalently, the total cost caused by the product or group of products. *See* Section IV.B.2.

undermine the Postal Service's ability to compete. *See id.*

The inability to further allocate institutional costs under the current methodology, however, does not mean that the Postal Service has an unfair competitive advantage with respect to Competitive products. *See id.* The available evidence suggests that the market is healthy and competitive. *See id.;* Section VI.B.2. There is no evidence that the Postal Service has engaged in anticompetitive pricing of Competitive products; to the contrary, the evidence suggests that the Postal Service is incentivized to maximize Competitive product profits, and its market conduct has been in line with what would be expected of a profit-maximizing firm. *See* Section VI.A.2. Competitive product contribution to institutional costs has always exceeded the required amount, often by a significant margin.[3] The Commission has elected to retain the appropriate share to serve as a margin of safety against any possibility of the Postal Service having an unfair competitive advantage. *See* Section VI.A.2. Under the proposed dynamic formula-based approach, the appropriate share requirement would increase due to growth in the profitability or market share of the Postal Service's Competitive products. *See id.*

With the foregoing clarifications having been made, the Commission explains how the formula operates and how it accounts for the prevailing competitive conditions in the market and other relevant circumstances that the Commission has historically considered qualitatively when evaluating the appropriate share requirement. *See* Section VI.B. Because the dynamic formula-based approach reasonably reflects the qualitative statutory criteria from 39 U.S.C. 3633(b), it easily falls within the Commission's broad discretion to determine what the appropriate share should be. *See* Section VI.B.1. The Commission concludes that the appropriate share requirement, as derived from the formula, is sufficient to prevent the possibility of the Postal Service engaging in anticompetitive pricing of Competitive products. *See* Section VI.B.1.c.

III. Basis and Purpose of Proposed Rule

The purpose of the Commission's dynamic formula-based approach is to provide an objective basis on which to quantify the statutory considerations of section 3633(b) in order to determine the year-to-year change in Competitive products' joint minimal capacity to generate profit that can be contributed to the coverage of institutional costs. Order No. 6043 at 99.

The formula seeks to determine the Postal Service's overall market power by measuring its absolute and relative market power.[4] In order to assess the Postal Service's absolute market power and its market position, the formula utilizes two distinct components. The first component is the Competitive Contribution Margin, which measures the Postal Service's absolute market power. *Id.* at 99–101. Specifically, the Competitive Contribution Margin is calculated by subtracting the total attributable costs of producing the Postal Service's competitive products collectively from the total amount of revenue the Postal Service is able to realize from those competitive products collectively in a given fiscal year, and then dividing this result by the total competitive product revenue. *Id.* at 99–100. The formula assesses the year-over-year percent change in the Competitive Contribution Margin to determine how much, if any, the Postal Service's absolute market power has changed. *Id.* at 100.

The second component of the formula is the Competitive Growth Differential, which measures the Postal Service's market position. *Id.* at 100–101. Specifically, the Competitive Growth Differential is calculated by subtracting the year-over-year percent change in the combined revenue for the Postal Service's competitors from the year-over-year percent change in the Postal Service's competitive product revenue. *Id.* This relative growth is then weighted by the Postal Service's market share. *Id.* at 100.

Using the above-described components, the Commission's formula is represented by the following equation:

$$AS_{t+1} = AS_t * (1 + \%\Delta CCM_{t-1} + CGD_{t-1})$$

If $t = 0 = FY$ 2007, AS = 5.5%

Where,

AS = Appropriate Share
CCM = Competitive Contribution Margin
CGD = Competitive Growth Differential
t = Fiscal Year

Id. at 102.

In order to calculate an upcoming fiscal year's appropriate share percentage (AS_{t+1}), the formula multiplies the sum of the prior fiscal year's Competitive Growth Differential and percentage change in the Competitive Contribution Margin ($1 + \%\Delta CCM_{t-1} = CGD_{t-1}$) by the current fiscal year's appropriate share (AS_t). *Id.* Both components of the formula are given equal weight. *Id.* The formula is recursive in order to incorporate all changes in the parcel delivery market since the PAEA was enacted and the appropriate share was initially set. *Id.* at 103. The formula's calculation thus begins in FY 2007 with a beginning appropriate share of 5.5 percent. *Id.* The upcoming fiscal year's appropriate share will be updated by the Commission each year as part of the Commission's Annual Compliance Determination, which is performed pursuant to 39 U.S.C. 3653. *Id.*

Because another 5 years has passed since the Commission's review began in Docket No. RM2017–1, Order No. 6043 also initiates the Commission's third 5-year review via Docket No. RM2022–2. Because the issues and facts under review are related, the two dockets are consolidated to enable more efficient administration of proceedings before the Commission. *See* 39 U.S.C. 503; 39 CFR 3010.104.

IV. Proposed Rule

In order to implement the Commission's formula, existing § 3035.107(c) is reissued. Proposed § 3035.107(c)(1) establishes the formula that is to be used in calculating the appropriate share and defines each of the formula's terms. Proposed § 3035.107(c)(1) states that the appropriate share of institutional costs to be covered by competitive products set forth in that rule is a minimum contribution level. Proposed § 3035.107(c)(2) establishes the process by which the Commission shall update the appropriate share for each fiscal year. The Commission will annually use the formula to calculate the minimum appropriate share for the upcoming fiscal year and report the new appropriate share level for the upcoming fiscal year as part of its Annual Compliance Determination.

List of Subjects for 39 CFR Part 3035

Administrative practice and procedure.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

[3] *See id.* (citing FY 2020 ACD at 91–95; FY 2019 ACD at 86–89; FY 2018 ACD at 112–17; Order No. 4402 at 52–53 (83 FR 6758, Feb. 14, 2018).

[4] Market power is a firm's ability to price a product or service higher than the marginal cost of producing it and, as a concept, embodies both absolute and relative aspects. *Id.* A firm's absolute market power is its ability to raise prices with regard to its own consumers. *Id.* A firm's relative market power, which can also be described as its market position, is its capacity to exercise market power relative to its competitors. *Id.*

PART 3035—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

■ 1. The authority citation for part 3035 continues to read as follows:

Authority: 39 U.S.C. 503; 3633.

■ 2. Amend § 3035.107 by revising paragraph (c) to read as follows:

§ 3035.107 Standards for compliance.

* * * * *

(c)(1) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula:

$$AS_{t+1} = AS_t * (1 + \%\Delta CCM_{t-1} + CGD_{t-1})$$

Where:

AS = Appropriate Share, expressed as a percentage and rounded to one decimal place.
CCM = Competitive Contribution Margin.
CGD = Competitive Growth Differential.
t = Fiscal Year.
If t = 0 = FY 2007, AS = 5.5 percent.

(2) The Commission shall, as part of each Annual Compliance Determination, calculate and report competitive products' appropriate share for the upcoming fiscal year using the formula set forth in paragraph (c)(1) of this section.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2021–25841 Filed 11–29–21; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0699; FRL–9271–01–R5]

Air Plan Approval; Ohio; Partial Approval and Partial Disapproval of the Muskingum River SO_2 Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to the Ohio State Implementation Plan (SIP) intended to provide for attaining the 2010 primary, health-based 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS or ''standard'') for the Muskingum River SO_2 nonattainment area. This SIP revision (hereinafter referred to as Ohio's Muskingum River SO_2 attainment plan or plan) includes Ohio's attainment demonstration and other attainment planning elements required under the Clean Air Act (CAA). EPA is proposing to approve the base year emissions inventory and affirm that the nonattainment new source review requirements for the area have been met. EPA is proposing to disapprove the attainment plan, since the plan relies on, among other things, acquisition of a parcel of land by a facility, Globe Metallurgical (Globe), located within the nonattainment area. Globe has recently indicated to EPA and Ohio EPA that it will not be purchasing that parcel of land. Additionally, EPA is proposing to disapprove the plan for failing to meet the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures/reasonably available control technology (RACM/RACT), emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. Based on the change in circumstances since the original proposed action, EPA is now proposing a changed course of action.

DATES: Comments must be received on or before December 30, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0699 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6956, *harrison.gina@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION:

I. What actions did EPA propose in this SIP submission?

On September 29, 2020,[1] EPA proposed to approve Ohio's SO_2 plan for the Muskingum River area submitted on April 3, 2015 and October 13, 2015, and supplemented on June 23, 2020. EPA also proposed to approve and incorporate by reference Ohio EPA's Director's Final Findings and Orders issued to Globe on June 23, 2020 (DFFOs), including emission limits and associated compliance monitoring, recordkeeping, and reporting requirements. In addition, EPA proposed to approve the base year emissions inventory and to affirm that the new source review requirements for the area had previously been met.

EPA's notice of proposed rulemaking provided an explanation of the provisions in the CAA and the measures and limitations identified in Ohio's attainment plan to satisfy these provisions. Ohio's plan was based on, among other things, the proposed acquisition by Globe of a tract of property to the north of the Globe facility that would have resulted in increased distance between the emissions source and the fenceline. EPA found that with the inclusion of this property within Globe's fenceline, Ohio's modeling results, based on modeling without receptors on fenced plant property and including the property proposed for purchase, were adequate to demonstrate that no ambient violations of the 1-hour SO_2 NAAQS would occur.

On June 1, 2021, EPA learned from Ohio EPA that Globe had decided not to purchase the land as anticipated by the attainment plan. As the attainment demonstration relied on the inclusion of this property within Globe's fenceline, failure to obtain the land renders the attainment demonstration invalid. Without a valid attainment demonstration, the proposed plan does

[1] 85 FR 60933 (September 29, 2020).

not meet the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. EPA indicated to Ohio EPA and to Globe that final action to disapprove the attainment demonstration would start sanctions and Federal implementation plan (FIP) clocks for this area under CAA sections 179(a)–(b) and 110(c), respectively. EPA notes that approval of a revised attainment demonstration would remove the sanctions and FIP clocks, and such measures would be terminated by an EPA rulemaking approving a revised attainment demonstration.

II. What is EPA's response to comments received on the previous proposed rulemaking?

The proposed action described above provided a public comment period that closed on October 29, 2020. EPA received no relevant comments on the proposed action.

III. What action is EPA taking?

Based on the rationale set forth in the September 29, 2020 proposed rulemaking, EPA is proposing to approve the base year emissions inventory and affirming that the new source review requirements for the area have been met.

Because the area no longer has valid modeling showing attainment, EPA is proposing to disapprove Ohio's attainment demonstration for the Muskingum River SO_2 nonattainment area, including the DFFOs, as well as the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. This disapproval will start sanctions clocks for this area under CAA section 179(a)–(b), including a requirement for 2-for-1 offsets for any major new sources or major modifications 18 months after the effective date of this action, and highway funding sanctions 6 months thereafter, as well as initiate an obligation for EPA to promulgate a FIP within 24 months, under CAA section 110(c), unless in the meantime EPA has approved a plan that satisfies the requirements that EPA is finding unsatisfied.

IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 17, 2021.

Cheryl Newton,

Deputy Regional Administrator, Region 5.

[FR Doc. 2021–25975 Filed 11–29–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–422; FCC 21–117; FR ID 58894]

Updating FM Broadcast Radio Service Directional Antenna Performance Verification

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission adopted a Notice of Proposed Rulemaking, in which it sought comment on proposals to change the rules governing verification of FM and Low Power FM (LPFM) directional antennas by broadcast station applicants. These specific rule changes were proposed based on a Petition for Rule Making filed by four antenna manufacturers and one broadcaster.

DATES: Comments may be filed on or before December 30, 2021 and reply comments may be filed on or before January 14, 2022.

ADDRESSES: You may submit comments, identified by MB Docket No. 21–422, by any of the following methods:

- *Electronic Filers:* Federal Communications Commission's website: *http://apps.fcc.gov/ecfs//.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no

longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

• During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People With Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418–2700. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), MB Docket No. 21–422; FCC 21–117, adopted and released on November 15, 2021. The full text of this document is available for public inspection and copying via ECFS at *http://apps.fcc.gov/ecfs* and the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-21-117A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The NPRM in document FCC 21–117 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act, Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. Some broadcast stations use antennas that suppress the radiated field in certain directions and enhance it in others, known as directional antennas. Whether used by an AM, FM, Low Power FM (LPFM), or digital television (DTV) station, the goal is the same: To radiate more radiofrequency energy in some directions than others, in order to prevent interference to other broadcast stations, or to prevent the signal from radiating outside the station's authorized service area.

2. The Commission's rules require that upon completion of the construction of a broadcast antenna system, a showing is required to demonstrate that the facility is operating in compliance with its construction permit in order to be licensed. Joint Petitioners cite specifically to the Commission's rules regarding FM and TV directional station licensing, particularly 47 CFR 73.316 and 73.685, respectively. They note that since the Commission adopted these rules in 1963, and continuing through almost 60 years' worth of amendments, the major difference between the FM and TV rules is that § 73.316 requires an applicant for a license to cover a construction permit specifying an FM directional antenna system to provide a ''tabulation of the measured relative field pattern'' set forth in the construction permit, while 47 CFR 73.685 requires only a ''tabulation of the relative field pattern'' of a TV directional antenna without requiring that the pattern be ''measured.''

3. In order to provide permittees with the measurements that 47 CFR 73.316(c)(2)(iii) requires to verify the performance of a directional FM broadcast antenna, directional antenna manufacturers may mount a full-scale model of the antenna or some elements of it on a test range, which is a large open area maintained by the antenna manufacturer (in most cases) for such testing, with pre-positioned testing probes for measuring signal strength in the far field of the antenna pattern. Such a re-creation of the antenna includes replicating the tower or pole on which the antenna is to be mounted, and may also include replicating any structures on or near the ultimate site of the antenna, as such structures can affect the antenna's radiation pattern in specific ways. The other common method is to construct a smaller, scale model of the antenna, mounting structure, and nearby structures, and to take measurements of the signal generated by the scale model in an indoor anechoic (non-reflecting) chamber.

4. Joint Petitioners point out these methods for measuring FM directional antenna patterns greatly increase expenses for broadcasters and potentially lead to inaccurate results. Broadcasters bear the expense of physically re-creating the environment in which the directional FM antenna is to be installed, including occasionally needing to create single-use components to duplicate non-standard mounting structures. The Joint Petitioners additionally note it is difficult to produce accurate mechanical and, thus, electrical alignment of the test range. Any mis-alignments can cause deviations of the test range from the idealized perfectly aligned range, and can lead to inaccurate test results. According to Joint Petitioners, computerized models can reduce or eliminate these mechanical errors.

5. Joint Petitioners note other instances in which the Commission has allowed the use of computer modeling to demonstrate compliance with the rules. For example, the Commission in 2008 allowed AM broadcasters using series-fed radiators in their directional antenna arrays to replace measured proofs of performance of their directional antenna systems with computer models using the ''method of moments'' system, based on the Numerical Electromagnetics Code (NEC) moment method of analysis developed at the Lawrence Livermore Laboratory, Livermore, California. The Commission allowed applicants for certain AM directional stations to use method of moments computer modeling to demonstrate the performance of their directional antenna arrays.

6. Joint Petitioners thus argue that the time is ripe for the Commission to update its rules to allow computer modeling, at the applicant's option, in lieu of physical modeling and measurement when verifying FM directional antenna performance. In further support of their argument, Joint Petitioners include results of a sample study of an actual directional FM station, comparing results of a computer-modeled directional pattern proof to a previous scale-model physical measurement of performance of that station's directional antenna. The comparison showed close correlation

between the results of the physical model measurements and those predicted by the computer model. Although Joint Petitioners further maintain that there should be no need, based on current rules, to establish the qualifications of the antenna design engineer(s) (as opposed to the engineer(s) supervising antenna installation, as required in 47 CFR 73.316(c)(2)(vii)), Joint Petitioners' proposed amendment to § 73.316 includes a requirement identifying and describing the software tools and procedures used in designing the antenna, and setting forth the qualifications of the engineer(s) who designed the antenna, who performed the modeling, and who prepared the instructions for mounting of the antenna at the site. By including this information, Commission staff would be able to evaluate the methods used and, presumably, the accuracy of the computer-modeled verification of the directional pattern.

7. The Commission tentatively concluded that requiring FM and LPFM applicants to provide physical measurements as the only means to verify directional antenna patterns is outdated. This restriction places such applicants on an unequal footing with their AM and DTV counterparts. The Commission therefore seeks comment on whether it should adopt Joint Petitioners' proposed rule amendments, attached hereto as Appendix A, to give applicants proposing directional FM and LPFM facilities the option of using computer modeling for pattern verification. As discussed below, it solicits commenter input on Joint Petitioners' proposed rule amendments, as well as any concerns about whether computer modeling, without any physical confirmation, will provide sufficient assurance that an applicant's FM directional antenna will perform in the field as predicted in the model.

8. The Commission believes that the proposed rule change would provide regulatory parity and ongoing relief for both antenna manufacturers and FM broadcasters while maintaining the integrity of its licensing requirements. Commission records indicate that over 2,000 full-service FM broadcast stations, 21.5% of such stations, use directional antennas. Our records also indicate that 10 LPFM stations, 0.5% of the total, use directional antennas. The proposed rule change would allow any of those stations that replace existing antennas to avoid the expense of field measurements. Additionally, given the ongoing demand for FM spectrum and the need for new stations to avoid interference to existing broadcasters, the Commission anticipates an increase in the use of directional antennas. It believes those future broadcast applicants would benefit from this proposal. Petitioners assert that the requirements of 47 CFR 73.316(c)(2) can require sometimes substantial expenditures of time and money to such applicants. The Commission agreed with the Joint Petitioners that when § 73.316 was first added to the rules over five decades ago, the computer tools enabling design and modeling of directional antennas did not exist. As the Joint Petitioners point out, broadcasters and the Commission now can take advantage of the newly developed modeling tools. The Commission seeks comment on whether use of these tools will increase the risk of interference to adjacent stations. Finally, adopting the proposed rule change would align § 73.316 with the rules regarding AM and TV directional station licensing. The Commission seeks comment on these issues.

9. *Correlating physical measurements.* The Commission seeks comment on whether it should require any physical measurement in addition to computer modeling. Historically it has been rare for the Media Bureau to receive complaints from stations about interference attributable to directional FM broadcast stations. Is this because manufacturing standards are so high that the risk of incorrect directional patterns is minimized? Or has § 73.316 forced manufacturers and broadcasters to take extra and necessary steps to minimize risk? The Commission seeks input on whether computer modeling by itself is sufficient or whether some reduced level of field measurement is still necessary. Is there a less resource intensive and costly level of field verification that would enhance the reliability of computer modeling? Although Joint Petitioners point to the method of moments modeling of AM directional systems in support of their proposal, the AM directional procedures do not rely solely on computer modeling, but rather such modeling must be verified by correlation with monitored antenna sample indications. *See* 47 CFR 73.151(c)(1), (c)(2)(ii). Thus, in the case of AM directional arrays, proper adjustment of the antenna pattern is determined by comparing the method of moments computer model with measurements taken of the antenna array. Joint Petitioners' proposed rule changes do not propose any such measured parameters for pattern verification. The Commission seeks comment as to whether there are physical measurements that should be taken from an installed FM directional antenna that can similarly be correlated with the computer model of that antenna, in order to verify adjustment of the antenna pattern.

10. *Directional FM antenna modeling software.* The Commission also seeks input on whether it should adopt a specific computer program or underlying model for directional FM antenna verification. Joint Petitioners state that there currently exist ''several software programs that can be used for modeling antennas as well as environmental objects in proximity to the antennas, plus filters, transmission lines, hybrids, lumped constant RF components, and so on.'' Is there a common program or model that antenna manufacturers and/or broadcast engineers agree provides the greatest accuracy? For example, the method of moments is the accepted method for modeling AM directional antenna arrays. Is there a similarly accepted method for modeling directional FM antennas? Is any other local, state, or Federal Government agency currently using a model that would be suitable for this purpose? Similarly, are there suitable models currently in use outside the United States? Is there a voluntary consensus standard for modeling directional FM antennas and, if so, is there any reason use of such a standard would be impractical or otherwise unsuitable? If there is a voluntary consensus standard for directional FM antennal verification, commenters should discuss the process by which the standard was developed with reference to openness of the process to a broad and balanced range of stakeholders, transparency of the process, due process considerations (*e.g.,* notice of meetings), any appeals process, and consensus procedures. Commenters should also state whether any voluntary consensus standard is an international standard. Additionally, 47 CFR 2.1093(d)(2) by its terms requires ''adequate documentation'' demonstrating full validation of the numerical method used in the computer software for evaluating compliance with limits on specific absorption rates of radiofrequency energy, and further requires that the equipment used must be modeled under FCC-accepted standards or procedures. Should a similar provision be included in any amendment to § 73.316? Commenters should discuss the extent to which any amendment of our rules based on computer models would establish performance rather than design criteria, as well as the ability of small and medium-size enterprises to use and

benefit from using an approved or designated computer model.

11. Assuming that there is no single voluntary consensus standard as to FM directional modeling software, the Commission invites comment on what computer modeling software it should accept from applicants to verify FM directional antenna patterns. It asks, for example, whether verification should be limited to the computer modeling software used by the various antenna manufacturers in evaluating their products. Do these programs have a common theoretical basis, such that results generated by manufacturers' in-house software programs should be accepted as accurate? Alternatively, should we accept results from other software products created by engineering consultants or other third-party vendors that are commonly used in the industry to verify FM directional antenna patterns? Do such third-party software products also share a common theoretical basis with each other and with antenna manufacturers' software, such that all may be relied upon to the same degree? Are commenters aware of significant differences among the results of the prediction models generated by the several software programs available, indicating that some are more accurate than others? Commenters are also asked to address whether we should accept results from modeling software written by an individual engineer or broadcaster for a specific antenna, and if so what showings, if any, must be made to vouch for the accuracy of such software?

12. In the event that commenters believe we should accept computer-modeled FM pattern verifications, no matter what models or software are used, the Commission asks that they address how the staff should evaluate the directional antenna models used and how any model will incorporate advances in technology. While the Joint Petitioners' proposed rules require submission of a detailed description of the software tools and procedures being used and the qualifications of the engineer(s) constructing the computer models, given the number of such software programs, the Commission asks commenters to discuss how Commission staff should accept or confirm the accuracy of such models. Are there specific types of antenna installations where measurements should still be required (for example, installations on the sides of buildings)? What information regarding submitted computer models should be provided in license applications? Should that information be greater or less than that proposed by Joint Petitioners? To what extent will the Commission staff be able to use any recommended computer model to confirm or replicate the results submitted by applicants?

13. Additionally, in discussing the software proposed to be used in modeling FM directional antenna patterns, the Commission asks commenters specifically to enumerate the costs and benefits of the proposed software and any alternatives proposed by commenters. This should include the costs to license any software needed to run an approved or designated computer model, and the distribution of costs and benefits among stakeholders. To the extent possible, commenters should also quantify projected costs and benefits, identify supporting evidence and any underlying assumptions, and explain any difficulties faced in trying to quantify benefits and costs of the proposals and how the Commission might nonetheless evaluate them.

14. *Interference complaints.* The Commission seeks comment on whether our existing policies are sufficient to resolve any interference complaints or disputes pertaining to the directional FM antennas. *See* 47 CFR 73.209, 73.211. Are new or modified rules necessary to address such complaints or disputes? Should the burden of proof fall on the applicant providing verification of antenna pattern performance via computer modeling, or on the complaining party? Should the burden shift if the operator of the FM directional station provided measurements as opposed to solely computer model data? What level of proof is needed to overcome a complaint that a directional FM antenna is not performing as predicted? Duplication or scale modeling of the installed antenna for purposes of measurement to overcome an accusation of faulty pattern performance would involve considerable expense. What safeguards, if any, are needed to prevent frivolous complaints of inaccurate FM directional pattern performance?

15. *Experience with computer modeling of directional FM antennas.* Perhaps most importantly, the Commission is interested in comments from broadcasters, engineers, and manufacturers who have used both computer modeling of FM directional antennas and physical models of the same, and who can discuss their experience regarding the accuracy of computer-modeled antennas vis-à-vis the performance of such antennas as installed. Based on such experience, are commenters confident that computer modeling can take the place of physical measurements of FM directional antennas or scale models of such antennas? Are there specific procedures that in commenters' experience would affect the accuracy of such computer models, in either a positive or negative manner? Are there particular difficulties in simulating certain environments in which a computer-modeled FM directional antenna is to be installed that would argue against use of computer modeling in those situations, and are there ways in which those difficulties can be minimized or overcome? Again, are there measurable attributes of an installed FM directional antenna that can be used to confirm the accuracy of a computer-generated model of the antenna's pattern without performing field measurements? The Commission invites comment on these and any other issues relevant to this proposal to update its FM directional antenna rules.

16. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.[1] See Exec. Order No. 13985, 86 FR 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021). Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' 47 U.S.C. 151. Specifically, it seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and

[1] Such individuals include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

Ex Parte Rules

17. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules, 47 CFR 1.1200 *et seq.* Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Initial Regulatory Flexibility Analysis

18. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of the *NPRM.* The Commission will send a copy of this entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

20. The Commission initiates this rulemaking proceeding to obtain comments regarding its proposal to allow an applicant for an FM broadcast station utilizing a directional antenna to verify the antenna's directional pattern through the use of computer modeling, rather than physical modeling and measurements. An applicant for a directional FM station currently must verify the accuracy of the directional pattern by way of measurements, which are made either on a full-scale replica of the antenna on a test range, or on a scale model of the antenna in an anechoic chamber. In either case the model must include elements replicating the environment of the antenna as it is to be installed, including the support structure, transmission lines, other nearby antennas, or other structures that could affect the directional pattern. The NPRM proposes to give applicants proposing directional FM facilities the option, in lieu of such physical models and measurements, to verify antenna pattern performance via computer modeling, which is less expensive and able to be adjusted to account for conditions in the installed environment.

B. Legal Basis

21. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, 319.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

22. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

23. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

24. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial FM radio stations to be 6,682, the number of licensed FM translator and booster stations to be 8,771, and the number of

licensed LPFM stations to be 2,081, for a total number of 17,534. As of July 2021, 6,676 of 6,677 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA). In addition, the Commission has estimated the number of noncommercial educational (NCE) FM radio stations to be 4,214. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of full-service FM broadcast stations are small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. The NPRM proposes to amend existing rules to provide more flexibility and reduce expenses to applicants for FM broadcast stations proposing directional antenna patterns. The proposed revisions require additional paperwork obligations for those applicants opting to use computer modeling rather than the currently accepted physical measurements to verify FM directional patterns.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. In the NPRM, the Commission proposes to amend existing rules to allow the same computer modeling for proposed FM directional antennas that is allowed for verifying directional antenna patterns in the AM and TV/DTV services. The proposed rules will eliminate the requirement that applicants provide measured tabulations of FM directional antenna patterns, and allow them to verify FM directional antenna patterns by use of computer models. These revisions will reduce the expense to station applicants of having to create physical models of FM directional antennas and their environs in order to make the measurements required by the current rules. The proposed rule amendments will therefore reduce costs to these FM applicants and will reduce the amount of time needed to construct and install directional FM antennas.

28. Alternatives considered by the Commission include retaining the existing rules, and requiring measurement of certain antenna parameters to assist in verification of FM directional antenna coverage patterns if the applicant uses computer modeling. The Commission seeks comment on the effect of the proposed rule changes on all affected entities. The Commission is open to consideration of alternatives to the proposals under consideration, including but not limited to alternatives that will minimize the burden on broadcasters, most of which are small businesses.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

29. None.

Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Notice of Proposed Rulemaking *is adopted.*

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Amend § 73.316 by revising paragraph (c)(2)(iii), redesignating paragraphs (c)(2)(iv) through (ix) as paragraphs (c)(2)(v) through (x), and adding new paragraph (c)(2)(iv) to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(c) * * *

(2) * * *

(iii) A tabulation of the measured or computer modeled relative field pattern required in paragraph (c)(1) of this section. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10 degrees. Sufficient vertical patterns to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. Complete information and patterns must be provided for angles of −10 deg. from the horizontal plane and sufficient additional information must be included on that portion of the pattern lying between + 10 deg. and the zenith and −10 deg. and the nadir, to conclusively demonstrate the absence of undesirable lobes in these areas. The vertical plane pattern must be plotted on rectangular coordinate paper with reference to the horizontal plane. In the case of a composite antenna composed of two or more individual antennas, the composite antenna pattern should be used, and not the pattern for each of the individual antennas.

(iv) When a directional antenna is computer modeled, as permitted in paragraphs (c)(2)(iii) and (x) of this section and in § 73.1690(c)(2), a statement from the engineer(s) responsible for designing the antenna, performing the modeling, and preparing the manufacturer's instructions for installation of the antenna, that identifies and describes the software tool(s) used in the modeling, the procedures applied in using the software, and lists such engineers' qualifications. Such computer modeling shall include modeling of the antenna mounted on a tower or tower section, and the tower or tower section model must include transmission lines, ladders, conduits, other antennas, and any other installations that may affect the computer modeled directional pattern.

* * * * *

■ 3. Amend § 73.1620 by revising paragraph (a)(3) to read as follows:

§ 73.1620 Program tests.

(a) * * *

(3) FM licensees replacing a directional antenna pursuant to § 73.1690 (c)(2) without changes which require a construction permit (*see* § 73.1690(b)) may immediately

commence program test operations with the new antenna at one half (50%) of the authorized ERP upon installation. If the directional antenna replacement is an EXACT duplicate of the antenna being replaced (*i.e.,* same manufacturer, antenna model number, and measured or computer modeled composite pattern), program tests may commence with the new antenna at the full authorized power upon installation. The licensee must file a modification of license application on FCC Form 302–FM within 10 days of commencing operations with the newly installed antenna, and the license application must contain all of the exhibits required by § 73.1690(c)(2). After review of the modification-of-license application to cover the antenna change, the Commission will issue a letter notifying the applicant whether program test operation at the full authorized power has been approved for the replacement directional antenna.

* * * * *

■ 4. Amend § 73.1690 by revising paragraph (c)(2) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(2) Replacement of a directional FM antenna, where the measured or computer modeled composite directional antenna pattern does not exceed the licensed composite directional pattern at any azimuth, where no change in effective radiated power will result, and where compliance with the principal coverage requirements of § 73.315(a) will be maintained by the measured or computer modeled directional pattern. The antenna must be mounted not more than 2 meters above or 4 meters below the authorized values. The modification of license application on Form 302–FM to cover the antenna replacement must contain all of the data in the following sections (i) through (v). Program test operations at one half (50%) power may commence immediately upon installation pursuant to § 73.1620(a)(3). However, if the replacement directional antenna is an exact replacement (*i.e.,* no change in manufacturer, antenna model number, AND measured or computer modeled composite antenna pattern), program test operations may commence immediately upon installation at the full authorized power.

(i) A measured or computer modeled directional antenna pattern and tabulation on the antenna manufacturer's letterhead showing both the horizontally and vertically polarized radiation components and demonstrating that neither of the components exceeds the authorized composite antenna pattern along any azimuth.

(ii) Contour protection stations authorized pursuant to § 73.215 or 73.509 must attach a showing that the RMS (root mean square) of the composite measured or computer modeled directional antenna pattern is 85% or more of the RMS of the authorized composite antenna pattern. *See* § 73.316(c)(9). If this requirement cannot be met, the licensee may include new relative field values with the license application to reduce the authorized composite antenna pattern so as to bring the measured or computer modeled composite antenna pattern into compliance with the 85 percent requirement.

(iii) A description from the manufacturer as to the procedures used to measure or computer model the directional antenna pattern. The antenna measurements or computer modeling must be performed with the antenna mounted on a tower, tower section, or scale model equivalent to that on which the antenna will be permanently mounted, and the tower or tower section must include transmission lines, ladders, conduits, other antennas, and any other installations which may affect the measured or computer modeled directional pattern. See § 73.316(c)(2)(iv) for details of the showings required in connection with an application filed for a station utilizing an FM directional antenna.

* * * * *

[FR Doc. 2021–25827 Filed 11–29–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 228, 242, and 252

[Docket DARS–2021–0024]

RIN 0750–AL13

Defense Federal Acquisition Regulation Supplement: Ground and Flight Risk (DFARS Case 2020–D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the requirements related to the assumption of risk associated with aircraft under DoD contracts. The current requirements are outdated and in need of revision to clarify applicability due to numerous changes in aircraft contract situations and the emergence of contracts for small, unmanned aircraft.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 31, 2022, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2020–D027, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2020–D027''; select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2020–D027'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2020–D027 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 571–372–6115.

SUPPLEMENTARY INFORMATION:

I. Background

The contract clause at DFARS 252.228–7001, Ground and Flight Risk, was established to reduce DoD acquisition costs by relieving contractors from the responsibility to obtain (and bill the Government for) commercial insurance to cover the loss of aircraft or damage to Government-owned aircraft in excess of the first $100,000 of loss or damage. The current clause requires the contractor to be responsible for the first $100,000 of loss or damage; and, when in excess of $100,000, the Government assumes the risk of loss of or damage to its aircraft. The clause is included (with rare exceptions) in solicitations and contracts for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft as prescribed in DFARS 228.370.

Through the clause, contractors are bound by the operating procedures contained in the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'' (Air Force Instruction 10–220_IP, Army Regulation

95–20, Naval Air Systems Command (NAVAIR) Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210.1 (Series)) in effect on the date of contract award. The combined regulation/instruction is used to mitigate the risk assumed by the Government through the clause, which was last updated in June 2010.

II. Discussion and Analysis

This proposed rule incorporates language in DFARS subpart 228.3 to update circumstances in which the contract clause at DFARS 252.228–7001 is to be used. The current text at DFARS 228.370 does not adequately address contractor-owned aircraft and exceptions to the use of the clause. The proposed text at 228.3 does not require use of the clause in solicitations and contracts for which a non-DoD customer allows the use of commercial insurance or other self-insurance, under which the aircraft are classified as certain unmanned aircraft systems, or under which the aircraft will be dismantled and removed from inventory. The proposed change at DFARS 242.302 provides guidance on the DoD policy for maintaining surveillance of aircraft flight and ground operations.

The changes proposed to DFARS clause 252.228–7001 remove confusing language and definitions and reflect changes in costs associated with evolving technology, such as relatively inexpensive drones. For example, the term ''in the open'' is replaced with the more common insurance term ''covered aircraft.'' The proposed language clarifies the difference between ''workmanship errors'' and ''damage.'' The update also clarifies the applicability of liability coverage for subcontracts, including those for commercial items.

Additionally, due to the wide range that has developed in aircraft unit prices and the range of overall contract cost based on the variety of services contractors may perform, the proposed rule adds reasonable alternatives for calculating the contractor's cost share in the event of a mishap to a covered aircraft. Specifically, except for loss or damage caused by negligence of Government personnel, the contractor will be responsible only for the least of the following 3 alternatives: (1) $200,000; (2) 20 percent of the price or estimated acquisition cost of affected aircraft; or (3) 20 percent of the price or estimated cost of the contract, task order, or delivery order. In other words, if 20 percent of the cost of an inexpensive aircraft (*e.g.,* a drone) or 20 percent of the price or estimated cost of a relatively inexpensive contract is less than $200,000, the contractor will pay a lesser cost share.

The proposed rule includes a new contract clause at DFARS 252.228–70XX, Public Aircraft and State Aircraft Operations—Liability, which is to be used when contracted aircraft perform public or state aircraft operations and the contract does not include DFARS clause 252.228–7001. The new clause provides definitions for terms related to public and state aircraft operations, requires compliance with the combined regulation/instruction for flight operations, and defines contractor liability for operations for contract performance conducted as public or state aircraft operations.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule proposes to revise the clause at DFARS 252.228–7001, Ground and Flight Risk, and to create one new clause at DFARS 252.228–70XX, Public Aircraft and State Aircraft Operations—Liability, for use in situations where contracted aircraft perform public aircraft operations or state aircraft operations and the clause at DFARS 252.228–7001 is not used. DoD intends to apply both clauses to contracts below the simplified acquisition threshold; doing so allows for the inclusion of lower value items in affected contracts, while preventing contractors who have contracts valued below $200,000 from being liable for the entirety of the loss or damages. This burden on these smaller purchases is not commensurate with those of the larger dollar value contracts and, therefore, discourages the contractors with lower value contracts from working with the Government.

DoD does not intend to apply either clause to prime contracts for commercial items including commercially available off-the-shelf items per DFARS 228.371. However, DFARS clause 252.228–7001 will apply to subcontracts for commercial items, with an exception for work subcontracted to a Federal Aviation Administration (FAA) Part 145 repair station performing work pursuant to their FAA license. DFARS clause 252.228–7001 provides for self-insurance to avoid reliance on commercial insurance for military aircraft. Application of DFARS 252.228–7001 to subcontracts, including those for commercial items, provides a mechanism to require subcontractor compliance with the combined regulation/instruction, which provides the terms and conditions for the Government's self-insurance.

IV. Expected Impact of the Rule

This rule is not expected to have a significant impact on the Government or industry. The rule updates and expands procedures and guidelines on use of DFARS clause 252.228–7001. The change in the calculation of the contractor's share of loss is viewed as a positive incentive in reducing the magnitude of the risk of loss for contractors. Although the dollar amount for contractor liability is increased from $100,000 to $200,000 in this proposed rule, the addition of reasonable alternatives that recognize the low cost of aircraft, such as drones, will mean that a contractor's share of loss may be much lower. The rule also provides a new clause 252.228–70XX, Public Aircraft and State Aircraft Operations—Liability, to use when conditions for use of 252.228–7001 are not met, but the acquisition involves public aircraft operations or state aircraft operations. It is expected that contract clause 252.228–70XX will be used very infrequently, fewer than 10 times annually.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule primarily provides updates and clarifications. As noted in Section IV of this preamble, the change in the calculation of the contractor's share of loss, increased from $100,000 to $200,000 in this clause, is viewed as a positive incentive in reducing the magnitude of the risk of loss for contractors. However, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update the ground and flight risk policy and associated contract clause at DFARS 252.228–7001, Ground and Flight Risk. The language is outdated and needs revision to clarify applicability due to numerous changes in aircraft contract situations and the emergence of contracts for small, unmanned aircraft. These updates also apply to contracts involving contractor-owned and operated aircraft. The proposed changes include the following: (1) Revising the clause prescription to clarify when use of the clause at DFARS 252.228–7001 is mandatory; (2) updating the clause to reflect the evolution of aircraft technology; (3) creating a new clause to apply to contractor-owned aircraft operated as public aircraft or in state aircraft status; and (4) clarifying how DoD will maintain surveillance of aircraft flight and ground operations during contract performance.

The objective of the rule is to update the ground and flight risk policy and associated clause. The legal basis for the rule is 41 U.S.C. 1707.

The proposed rule will apply to all small entities that will be awarded contracts for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft. According to data from the Federal Procurement Data System for fiscal years 2017 through 2019, DoD made approximately 6,287 awards per year on average for these types of acquisitions for a total of 18,861 awards. Approximately 7,757 of these awards were made to 2,185 unique small entities over the 3 fiscal years.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known, significant, alternative approaches to the proposed rule that would meet the objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2020–D027), in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35) or impact any existing information collection requirements.

List of Subjects in 48 CFR Parts 228, 242, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 228, 242, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 228, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 228—BONDS AND INSURANCE

228.370 [Redesignated as 228.371]

■ 2. Redesignate section 228.370 as section 228.371.

■ 3. Add new section 228.370 and sections 228.370–1 and 228.370–2 to read as follows:

228.370 Ground and flight risk.

228.370–1 Definitions.

As used in this section—

Civil aircraft means an aircraft other than a public aircraft or state aircraft.

Public aircraft means an aircraft that meets the definition in 49 U.S.C. 40102(a)(41) and the qualifications in 49 U.S.C. 40125. Specifically, a public aircraft means any of the following:

(1) An aircraft used only for the Government, except as provided in paragraphs (5) and (7) of this definition.

(2) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.

(3) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(4) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(5) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by 49 U.S.C. 40125(c). In the preceding sentence, the term *other commercial air service* means an aircraft operation that—

(i) Is within the United States territorial airspace;

(ii) The Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public; and

(iii) Must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(6) An unmanned aircraft that is owned and operated by, or exclusively leased for at least 90 continuous days by, an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in paragraph (7) of this definition.

(7) As described in 49 U.S.C.40125(b), an aircraft described in paragraph (1), (2), (3), or (4) of this definition does not qualify as a public aircraft in situations where the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

Public aircraft operation means operation of an aircraft that meets the legal definition of public aircraft established in 49 U.S.C. 40102(a)(41) and the legal qualifications for public aircraft status outlined in 49 U.S.C. 40125.

State aircraft means an aircraft operated by the Government for sovereign, noncommercial purposes such as military, customs, and police services. Military aircraft are afforded status as state aircraft. In very rare circumstances, DoD-contracted aircraft may be designated, in writing, by a responsible Government official pursuant to DoD Directive 4500.54E, DoD Foreign Clearance Program, to be operated in state aircraft status, and States may choose to treat them as

deemed state aircraft when they are operating under a Government contract.

228.370–2 General.

(a) *Preaward survey.* Before awarding any contract using the clause at 252.228–7001, Ground and Flight Risk, the contracting officer should obtain a preaward survey of the offeror's proposed aircraft flight and ground operations facility. If the offeror proposed subcontracting any aircraft work, the preaward survey should include a review of the subcontractor's facility. For acquisitions falling under the exceptions at 228.371(b)(1)(iii), (iv), and (vi), the contracting officer shall review the documentation the offeror submitted with the proposal in response to the DD Form 1423, Contract Data Requirements List, to ensure the offeror's commercial insurance provides the appropriate coverage required by the clause at 252.228–7001.

(b) *Foreign military sales.* The exception for foreign military sales (FMS) contracts at 228.371(b)(1)(iii) only applies to FMS cases where the FMS customer has explicitly refused assumption of risk of loss. If the FMS customer has accepted the standard Letter of Offer and Acceptance Standard Terms and Conditions, as described in DoD 5105.38–M, Security Assistance Management Manual, they have assumed risk of loss.

(c) *Commercial derivative aircraft.* The exception at 228.371(b)(1)(iv) for commercial derivative aircraft only applies if the contractor is a licensed and certified Federal Aviation Administration (FAA) repair station for the specific model of aircraft under contract, when work is being performed pursuant to the FAA license under 14 CFR part 145. The FAA's repair station search tool is available at *https://av-info.faa.gov/repairstation.asp.* All aircraft flying public aircraft operations operate under airworthiness certificates maintained by the military services. The FAA airworthiness certificate in the exception in this paragraph (c) underlies the military service certificate.

(d) *Insurance.* The clause at 252.228–7001, Ground and Flight Risk, reduces acquisition costs by eliminating the costs of insurance to incentivize the contractor to perform safe and effective operations. For this reason, 252.228–7001(f) specifies that insurance premium costs are unallowable. Additionally, 252.228–7001(d)(4) provides that the Government's assumption of risk does not apply where the loss or damage is covered by available insurance.

(e) *Damage to Government aircraft.* (1) Whenever damage to Government aircraft is reported, particularly when the cost of repair exceeds the contractor's share of loss provisions, the contracting officer shall make a liability determination in accordance with the applicable version of the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'' (Air Force Instruction 10–220_IP, Army Regulation 95–20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210.1 (Series)). Each incident should be evaluated on its own merits. The contracting officer should seek input from the Government flight representative (see 252.228–7001) and legal counsel, as needed.

(2) Contracting officers should consult with the requiring activity and the assigned contract administration office on replacement, repair, or beyond economic repair decisions.

(3) See PGI 228.370–2(e) for an example of workmanship error or damage.

■ 4. Amend newly redesignated section 228.371 by—

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f); and

■ c. Adding a new paragraph (c).

The revision and addition read as follows:

228.371 Additional clauses.

* * * * *

(b) Use the clause at 252.228–7001, Ground and Flight Risk, in solicitations and contracts—

(1) For the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft owned by or to be delivered to the Government, except those solicitations and contracts—

(i) That are strictly for activities incidental to the normal operations of the aircraft (*e.g.,* refueling operations, minor non-structural actions not requiring towing such as replacing aircraft tires due to wear and tear);

(ii) That are awarded for purchase under FAR part 12 procedures;

(iii) For which a non-DoD customer (including an FMS customer per 225.7305) has decided to allow the use of commercial insurance or other self-insurance;

(iv) For maintenance (ground operations only) of commercial derivative aircraft with an FAA certificate of airworthiness maintained to FAA standards. Performance under the exception in this paragraph (b)(1)(iv) must be at a licensed and certified FAA repair station rated for the type of aircraft and work to be maintained;

(v) Under which the aircraft are to be dismantled and removed from the inventory; or

(vi) Under which the aircraft are classified as Group 1 or 2 unmanned aircraft systems per DoD Instruction (DoDI) 6055.07, Mishap Notification, Investigation, Reporting, and Record Keeping, and the purchase price of the air vehicle, including installed Government-furnished equipment, is below the cost threshold for a Class C mishap per DoDI 6055.07; or

(2) Involving aircraft not owned by or to be delivered to the Government, only if the contracting officer decides that it is in the best interest of the Government. Potential factors for contracting officers to consider when deciding which course of action is in the best interest of the Government include, but are not limited to, whether—

(i) The cost of hull insurance exceeds the replacement cost of the aircraft;

(ii) Insurance is not available (*e.g.,* high-risk experimental flights and operations of aircraft in a war zone); or

(iii) Ground or flight activities that involve contractor-owned and contractor-operated aircraft may pose risk to Government aircraft (*e.g.,* due to close proximity in flight).

(c) Use the clause at 252.228–70XX, Public Aircraft and State Aircraft Operations—Liability, in solicitations and contracts that do not include the clause at 252.228–7001 but involve public aircraft operations or state aircraft operations.

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 5. Amend section 242.302 by adding paragraph (a)(56) to read as follows:

242.302 Contract administration functions.

(a) * * *

(56) Within DoD, maintaining surveillance of aircraft flight and ground operations is accomplished by incorporating into the contract, task order, or delivery order the requirements of the applicable version of the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'' (Air Force Instruction 10–220_IP, Army Regulation 95–20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210.1 (Series)). See PGI 242.302(a)(56).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.228–7000 [Amended]

■ 6. Amend section 252.228–7000 introductory text by removing ''228.370(a)'' and adding ''228.371(a)'' in its place.

■ 7. Revise section 252.228–7001 to read as follows:

252.228–7001 Ground and Flight Risk.

As prescribed in 228.371(b), use the following clause:

GROUND AND FLIGHT RISK (DATE)

(a) *Definitions.* As used in this clause—

Covered aircraft means an aircraft owned by or to be delivered to the Government and, when determined by the contracting officer and specifically identified as such in the contract Schedule, may include contractor-furnished aircraft that are not intended for induction into the DoD inventory, including—

(1) Any item, other than a rocket or missile, intended for flight (*e.g.,* fixed-winged aircraft, blended wing/lifting bodies, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, and unmanned aerial vehicles);

(2) Aircraft furnished by the Government to the Contractor under this contract while in the Contractor's possession, care, custody, or control regardless of their location, state of disassembly or reassembly; items removed from—

(i) A particular aircraft already in the Government inventory retain their status as covered aircraft, provided they are intended for reinstallation on that particular aircraft; and

(ii) An aircraft that are not intended for reinstallation on that aircraft lose their status as covered aircraft;

(3) New production aircraft when wholly outside of buildings on the Contractor's premises or other places described in the Schedule (*e.g.,* hush houses, run stations, and paint facilities).

(i) New production aircraft become covered aircraft at a stage of manufacture or production (similar to the point of manufacture in a conventional aircraft) when a wing, portion of a wing, or engine is attached to a fuselage.

(ii) Blended wing/lifting bodies become covered aircraft at a stage of manufacture or production when the center portion and a lifting surface become attached; and

(4) Commercial aircraft, to include commercially available off-the-shelf aircraft, become covered aircraft when the commercial aircraft arrives at the Contractor's place of performance for modification under the terms of the contract.

Contractor's managerial personnel means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All, or substantially all, of the Contractor's business;

(2) All, or substantially all, of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

Contractor's premises means those premises, including subcontractors' premises, designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

Crewmember means, unless otherwise provided in the Schedule, personnel required in the flight manual, assigned for the purpose of conducting any flight on behalf of the Contractor. It also includes any operator of an unmanned aerial vehicle.

Flight means any flight approved in writing by the Government flight representative, to include taxi test made in the performance of this contract, or flight for the purpose of safeguarding the aircraft.

Workmanship errors mean damage to the aircraft that is the result of a task, operation, or action that was originally planned or intended, the end result of which is a noncompliance with contract specifications.

(b) *Combined regulation/instruction.* The Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'' (Air Force Instruction 10–220_IP, Army Regulation 95–20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210.1 (Series)) in effect on the date of contract award. Compliance with the combined regulation/instruction is required from the time of contract award throughout the period of performance of the contract, regardless of the Government's assumption of risk under the contract.

(c) *Government as self-insurer.* The Government self-insures and assumes the risk of damage to, or loss or destruction of, covered aircraft subject to the following conditions:

(1) The Contractor's liability to the Government for damage, loss, or destruction of covered aircraft is limited to the Contractor's share of loss as defined at paragraph (h) of this clause, except when one of the exclusions at paragraph (d) applies.

(2) The liability provisions of this clause take precedence over the liability provisions of Federal Acquisition Regulation (FAR) clause 52.245–1, Government Property, with respect to covered aircraft.

(3) The Contractor is not liable for loss, damage, or destruction of covered aircraft as the result of normal wear and tear, or intentional damage or destruction as required in the Schedule.

(4) Conditions for Government assumption of risk in flight are as follows:

(i) The Contractor's crewmembers are approved in writing by the Government flight representative (GFR).

(ii) The flight is approved in writing by the GFR.

(d) *Exclusions from the Government's assumption of risk.* The Government's assumption of risk under this clause shall not extend to damage, loss, or destruction of covered aircraft which—

(1) Is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, including the Contractor's oversight of subcontractors;

(2) Is sustained during flight if either the flight or the crewmembers have not been approved in advance and in writing by the GFR, who has been authorized in accordance with the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'';

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, unless the transportation is limited to the vicinity of Contractor's premises, and incidental to work performed under the contract as described in the Schedule;

(4) Is covered by insurance;

(5) Occurs after the Contracting Officer has, in writing, revoked the Government's assumption of risk in accordance with paragraph (e)(1) of this clause;

(6) Is sustained due to workmanship errors; or

(7) Is found by the Contracting Officer to be the result of exposure to unreasonable conditions. The Contracting Officer will consider factors including but not limited to the following: Lack of adequate hangar fire suppression or firefighting vehicles, failure to provide adequate procedures to the GFR, or systemic failure to comply with approved procedures.

(e) *Revoking the Government's assumption of risk.*

(1) The Contracting Officer, when finding that Contractor managerial personnel have failed to comply with paragraph (b) of this clause, or finding the covered aircraft are exposed to unreasonable conditions, will notify the Contractor in writing and will require the Contractor to comply with contract requirements. This notice will state the timeframe to correct the noncompliance or conditions. If the Contracting Officer finds that the Contractor failed to correct the cited noncompliance or conditions within the specified timeframe, the Contracting Officer will issue a Notice of Revocation of the Government's assumption of risk for any covered aircraft.

(2) Upon receipt of the Notice of Revocation, the Contractor shall promptly correct the noncompliance or cited conditions, regardless of whether there is agreement that the conditions are unreasonable.

(3) If the Contracting Officer issues a Notice of Revocation pursuant to the terms of this clause—

(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of the previously covered aircraft;

(ii) Any costs incurred by the Contractor (including the costs of the Contractor's self-insurance, insurance premiums paid to insure the Contractor's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its risk are unallowable costs; and

(iii) The liability provisions of the clause at FAR 52.245–1, Government Property, are not applicable to the aircraft impacted by the Notice of Revocation.

(4) The Contractor shall promptly notify the Contracting Officer when the

noncompliance or cited conditions have been corrected. Within 3 days of receipt of the Contractor's Notice of Correction, the Contracting Officer will notify the Contractor whether the Government will resume risk of loss. The Contracting Officer will determine that the noncompliance or cited conditions have been corrected prior to resuming assumption of risk.

(5) The Notice of Revocation does not relieve the Contractor of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations.''

(6) Any disputes regarding the Contracting Officer's Notice of Revocation shall be subject to FAR clause 52.233–1, Disputes.

(f) *Contractor's exclusion of insurance costs.* The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance (including the Contractor's share of loss) covering damage, loss, or destruction of covered aircraft when the risk has been assumed by the Government, even if the assumption may be terminated for covered aircraft.

(g) *Procedures in the event of damage, loss, or destruction.*

(1) In the event of damage, loss, or destruction of covered aircraft, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, and to put all aircraft in the best possible order. Except in cases covered by paragraph (h)(2) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) If a new production aircraft is damaged, lost, or destroyed before it has become a covered aircraft, the Government bears no responsibility for risk of loss.

(3) If a new production aircraft is damaged, lost, or destroyed after it has become a covered aircraft, the Contractor shall take action in accordance with the Contracting Officer's written direction that the aircraft shall be—

(i) Replaced;

(ii) Repaired to the condition immediately prior to the damage; or

(iii) Considered beyond economic repair. The Contracting Officer will decide whether further actions are required under the contract.

(4) If a covered aircraft that has been furnished by the Government to the Contractor is damaged, lost, or destroyed while covered, the Contractor shall take action in accordance with the Contracting Officer's written direction that the aircraft shall be—

(i) Repaired; or

(ii) Considered beyond economic repair. The Contracting Officer will decide further actions required under the contract.

(5) The Contractor may submit a request for equitable adjustment for expenditures made in performing the obligations under this paragraph (g).

(h) *Contractor's share of loss.*

(1) The Contractor's share of loss or damage to covered aircraft (except for loss or damage caused by negligence of Government personnel) is the least of—

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(2) If the Government requires covered aircraft be replaced or repaired by the Contractor, any resulting equitable adjustment shall not include reimbursement of the Contractor's share of loss.

(3) In the event the Government does not decide to replace or repair, the Contractor agrees to credit the contract price or pay the Government, as directed by the Contracting Officer, the least of—

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(4) The costs incurred by the Contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to—

(i) The Contractor's share of loss under the Government's self-insurance;

(ii) The costs of the Contractor's self-insurance;

(iii) The deductible for any Contractor-purchased insurance;

(iv) Insurance premiums paid for Contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Contractor's liability.

(i) *Reimbursement from a third party.* In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of covered aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(j) *Liability to third parties.* Unless the flight and crewmembers have been approved in writing by the GFR, the Contractor shall not be reimbursed for liability to third parties for loss or damage to property or for death or bodily injury caused by covered aircraft during flight, even if the Government has accepted such liability under any other provisions of the contract.

(k) *Subcontracts.* The Contractor shall incorporate the requirements of this clause, including this paragraph (k), in subcontracts to include subcontracts for commercial items, except—

(1) The Contractor shall not include paragraph (f) in subcontracts for commercial items; and

(2) The Contractor shall not incorporate the requirements of this clause in subcontracts with Federal Aviation Administration (FAA) Part 145 repair stations performing work pursuant to their FAA license.

(End of clause)

252.228–7003 [Amended]

■ 7. Amend section 252.228–7003 introductory text by removing ''228.370(c)'' and adding ''228.371(d)'' in its place.

252.228–7005 [Amended]

■ 8. Amend section 252.228–7005 introductory text by removing ''228.370(d)'' and adding ''228.371(e)'' in its place.

252.228–7006 [Amended]

■ 9. Amend section 252.228–7006 introductory text by removing ''228.370(e)'' and adding ''228.371(f)'' in its place.

■ 10. Add section 252.228–70XX to read as follows:

252.228–70XX Public Aircraft and State Aircraft Operations—Liability.

As prescribed in 228.371(c), use the following clause:

Public Aircraft and State Aircraft Operations—Liability (Date)

(a) *Definitions.* As used in this clause—

Civil aircraft means an aircraft other than a public aircraft or state aircraft.

Public aircraft means an aircraft that meets the definition in 49 U.S.C. 40102(a)(41) and the qualifications in 49 U.S.C. 40125. Specifically, a public aircraft means any of the following:

(1) An aircraft used only for the Government, except as provided in paragraphs (5) and (7) of this definition.

(2) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.

(3) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(4) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(5) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by 49 U.S.C. 40125(c). In the preceding sentence, the term ''other commercial air service'' means an aircraft operation that—

(i) Is within the United States territorial airspace;

(ii) The Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public; and

(iii) Must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(6) An unmanned aircraft that is owned and operated by, or exclusively leased for at least 90 continuous days by, an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in paragraph (7) of this definition.

(7) As described in 49 U.S.C. 40125(b), an aircraft described in paragraphs (1), (2), (3), or (4) of this definition does not qualify as a public aircraft when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

Public aircraft operation means operation of an aircraft that meets the legal definition of public aircraft established in 49 U.S.C. 40102(a)(41) and the legal qualifications for public aircraft status outlined in 49 U.S.C. 40125.

State aircraft means an aircraft operated by the Government for sovereign, noncommercial purposes such as military, customs, and police services. Military aircraft are afforded status as state aircraft. In very rare circumstances, DoD-contracted aircraft may be designated, in writing, by a responsible Government official pursuant to DoD Directive 4500.54E, DoD Foreign Clearance Program, to be operated in state aircraft status, and such status cannot be deemed without a written designation by an authorized Government official.

(b) *Combined regulation/instruction.* Upon award, for contract performance to be conducted as a public aircraft operation, the Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'' (Air Force Instruction 10–220_IP, Army Regulation 95–20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210.1 (Series)) in effect on the date of contract award.

(c) *Contractor liability for operations for contract performance conducted as public aircraft operations or state aircraft operations.*

(1) The Contractor assumes responsibility for all damage or injury to persons or property, including the Contractor's employees and property and Government personnel and property, occasioned through the use, maintenance, and operation of the Contractor's aircraft or other equipment by, or the action of, the Contractor or the Contractor's employees and agents.

(2) The Contractor, at the Contractor's expense, shall maintain adequate public liability and property damage insurance, including hull insurance for the Contractor's aircraft, during the duration of this contract, insuring the Contractor against all claims for injury or damage.

(3) The Contractor shall maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(4) The Government will in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any aircraft or other equipment by, or the action of, the Contractor or the Contractor's employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

[FR Doc. 2021–25734 Filed 11–29–21; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 86, No. 227
Tuesday, November 30, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) 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; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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 these information collections are best assured of having their full effect if received by December 30, 2021. 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.

National Agricultural Statistics Service (NASS)

Title: 2022 Wisconsin Groundwater Survey.

OMB Control Number: 0535–0264.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. NASS will conduct a survey of houses or businesses that use private drinking wells near land used for agriculture in Wisconsin.

Selected houses or businesses in Wisconsin will be asked to provide data on age of the well, well specifications, water treatment from well, and drinking use. The respondent will also be asked to provide a water sample for analysis by the Wisconsin State Hygiene Lab.

General authority for these data collection activities is granted under U.S.C. title 7, section 2204. This survey will be conducted on a full cost recovery basis with the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) providing funding under a cooperative agreement.

Need and Use of the Information: According to the Wisconsin Department of Natural Resources (DNR) (*https://dnr.wisconsin.gov/topic/Wells*), ''About one-quarter of Wisconsin's population drinks water drawn from over 800,000 private wells.'' The groundwater survey is necessary because private drinking water wells serve as the primary source of water for many rural Wisconsin residents. DATCP and Wisconsin Department of Natural Resources (DNR) use the data from the survey to identify the current state of pesticide and nitrate contaminants in private drinking water wells in Wisconsin. The data are used to inform discussions with US Environmental Protection Agency (EPA)—Office of Pesticides Programs (OPP) and pesticide registrants for pesticides that are found to be of increased occurrence or concentration in private wells.

Description of Respondents: Houses or businesses that use private drinking wells near land used for agriculture in Wisconsin.

Number of Respondents: 500.

Frequency of Responses: Reporting: Once a year.

Total Burden Hours: 159.

National Agricultural Statistics Service

Title: Egg, Chicken, and Turkey Surveys.

OMB Control Number: 0535–0004.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The Egg, Chicken, and Turkey Surveys obtain basic poultry statistics from voluntary cooperators throughout the Nation. Statistics are published on placement of pullet chicks for hatchery supply flocks; hatching reports for broiler-type, egg-type, and turkey eggs; number of layers on hand; total table egg production; and production and value estimates for eggs, chickens, and turkeys. The frequencies of the surveys being conducted include weekly, monthly, and annually.

Need and Use of the Information: This information is used by producers, processors, feed dealers, and others in marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the National School Lunch Program and in formulation of export-import policy. The current expiration date for this docket is March 31, 2022.

Description of Respondents: Farmers, ranchers, farm managers, and farm contractors.

Number of Respondents: 2,667.

Frequency of Responses: Various from weekly to annually.

Total Burden Hours: 25,401.

Dated: November 24, 2021.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–26038 Filed 11–29–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID: FSA–2021–0015]

Information Collection Requests; Pandemic Livestock Indemnity Program (PLIP) and Pandemic Assistance for Timber and Haulers and Harvesters (PATHH)

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension of a currently approved information collections associated with Pandemic Livestock Indemnity Program (PLIP) and Pandemic Assistance for Timber and Haulers and Harvesters (PATHH) Program. FSA is making PLIP payments to livestock and poultry producers for losses of livestock or poultry depopulated before December 27, 2020, due to insufficient processing access, based on 80 percent of the fair market value of the livestock and poultry, and for the cost of depopulation (other than costs already compensated under the Environmental Quality Incentives Program). FSA is also providing assistance to timber harvesting businesses and timber hauling businesses impacted by the effects of the COVID–19 Outbreak.

DATES: We will consider comments that we receive by January 31, 2022.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to: *www.regulations.gov* and search for Docket ID FSA–2021–0015. Follow the online instructions for submitting comments.
- *Mail, Hand-Delivery, or Courier:* Director, Safety Net Division, FSA, USDA, 1400 Independence Avenue SW, Stop 0510, Washington, DC 20250–0522.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Brittany Ramsburg.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, contact Brittany Ramsburg by telephone: (202) 260–9303; or by email: *brittany.ramsburg@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION: Both information collections are being extended to continue the OMB approval for any additional information that may be needed until their payment process is fully completed. The 2 information collection requests are described as follows:

Title: Pandemic Livestock Indemnity Program (PLIP).

OMB Control Number: 0560–0301.

OMB Expiration Date: 01/31/2022.

Type of Request: Extension.

Abstract: FSA is making PLIP payments to livestock and poultry producers for losses of livestock or poultry depopulated before December 27, 2020, due to insufficient processing access, based on 80 percent of the fair market value of the livestock and poultry, and for the cost of depopulation (other than costs already compensated under the Environmental Quality Incentives Program).

The annual burden hours and the numbers of respondents and responses did not change since the OMB submission.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.55 hours per response to include the time for reviewing instructions, searching information, gathering and maintaining information, and completing and reviewing the collection of information.

Respondents: Individuals or households, businesses or other for profit farms.

Estimated Annual Number of Respondents: 2,546.

Estimated Number of Reponses per Respondent: 1.

Estimated Total Annual Responses: 2,546.

Estimated Average Time per Response: 0.55 hours.

Estimated Total Annual Burden on Respondents: 1,408 hours.

Title: PATHH Program.

OMB Control Number: 0560–0302.

OMB Expiration Date: 01/31/2022.

Type of Request: Extension.

Abstract: FSA is providing assistance to timber harvesting businesses and timber hauling businesses impacted by the effects of the COVID–19 Outbreak. PATHH eligibility for direct payments to eligible applicants who have suffered a gross revenue loss of at least 10 percent for the period from January 1 through December 1, 2020, compared to the period from January 1 through December 1, 2019. Two principal agencies will implement PATHH, the Farm Service Agency (FSA) and the United States Forest Service (FS). The program is under the general supervision and direction of the Administrator of FSA, and FS provides technical support.

The annual burden hours and the numbers of respondents and responses did not change since the last OMB submission.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.18 hours per response to include the time for reviewing instructions, searching information, gathering and maintaining information, and completing and reviewing the collection of information.

Respondents: Individuals or households, businesses or other for profit farms.

Estimated Annual Number of Respondents: 2,396.

Estimated Number of Reponses per Respondent: 2.8997.

Estimated Total Annual Responses: 6,948.

Estimated Average Time per Response: 0.18 hours.

Estimated Total Annual Burden on Respondents: 815 hours.

We are requesting comments on all aspects of these information collections to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; or

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2021–26080 Filed 11–29–21; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Media Outlets for Publication of Legal and Action Notices in the Southern Region

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: This notice lists all newspapers that will be used by the Ranger Districts, Grasslands, Forests, and the Regional Office of the Southern Region to publish notices in the applicable newspaper of record identified for the National Forest System unit. The intended effect of this action is to inform members of the public which newspapers will be used by the Forest Service to publish legal notices regarding proposed actions, notices of decisions, and notices indicating opportunities to file objections.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions and notices of the opportunity to object under 36 CFR 218 and 36 CFR 219 shall begin the first day after the date of this publication.

ADDRESSES: Robert Bergstrom, Administrative Review Coordinator, Southern Region, Planning, 1720 Peachtree Road NW, Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: Robert Bergstrom, Administrative Review Coordinator by telephone at (404) 606–6151 or by email at *robert.bergstrom@usda.gov.*

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southern Region will give notice of the opportunity to object to a proposed project under 36 CFR part 218, or to developing, amending or revising land management plans under 36 CFR 219 in the newspapers below which are listed by Forest Service administrative unit. The timeframe for filing a comment, appeal, or an objection shall be based on the date of publication of the notice of the proposed action in the newspaper of record for projects subject to 36 CFR 218 or 36 CFR 219. Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice. The following newspapers will be used to provide notice:

Southern Region

Regional Forester Decisions

Legal notices affecting National Forest System lands in more than one administrative unit of the 15 units in the Southern Region will appear in the ''*Atlanta Journal—Constitution*'', published daily in Atlanta, Georgia.

Legal notices affecting National Forest System lands in only one administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District of the 6 districts in the National Forests in Alabama:—''*Montgomery Advertiser*'', published daily in Montgomery, Alabama. Legal notices affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Bankhead Ranger District:—''*Northwest Alabamian*'', published bi-weekly (Wednesday & Saturday) in Haleyville, Alabama.

Conecuh Ranger District:—''*The Andalusia Star News*'', published bi-weekly (Wednesday and Saturday) in Andalusia, Alabama.

Oakmulgee Ranger District:—''*The Tuscaloosa News*'', published daily in Tuscaloosa, Alabama.

Shoal Creek Ranger District:—''*The Anniston Star*'' published daily in Anniston, Alabama.

Talladega Division:—''*The Anniston Star*'', published daily in Anniston, Alabama.

Talladega Ranger District:—''*The Daily Home*'', published daily in Talladega, Alabama.

Tuskegee Ranger District:—''*Tuskegee News*'', published weekly (Thursday) in Tuskegee, Alabama.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

''*The Times*'', published daily in Gainesville, Georgia.

District Ranger Decisions

Blue Ridge Ranger District:—''*The News Observer*'', (newspaper of record) published weekly (Wednesday) in Blue Ridge, Georgia.

''*North Georgia News*'', (newspaper of record) published weekly (Wednesday) in Blairsville, Georgia.

Conasauga Ranger District:—''*Daily Citizen*'', published daily in Dalton, Georgia; ''*The Chatsworth Times*'', published weekly (Wednesday), in Chatsworth, Georgia.

Chattooga River Ranger District:—''*The Northeast Georgian*'', (newspaper of record) published bi-weekly (Wednesday & Friday) in Cornelia, Georgia.

''*Clayton Tribune*'', (newspaper of record) published weekly (Thursday) in Clayton, Georgia.

Oconee Ranger District:—''*Eatonton Messenger*'', published weekly (Thursday) in Eatonton, Georgia.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

''*Cleveland Daily Banner*'', published Sunday, Wedneday, and Friday in Cleveland, Tennessee.

District Ranger Decisions

Unaka Ranger District:—''*Greeneville Sun*'', published daily (except Sunday) in Greeneville, Tennessee.

Ocoee-Hiwassee Ranger District:—''*Polk County News*'', published weekly (Thursday) in Benton, Tennessee.

Tellico Ranger District:—''*Monroe County Advocate & Democrat*'', published bi-weekly (Wednesday and Sunday) in Sweetwater, Tennessee.

Watauga Ranger District:—''*Johnson City Press*'', published daily in Johnson City, Tennessee.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

''*Lexington Herald-Leader*'', published daily in Lexington, Kentucky.

District Ranger Decisions

Cumberland Ranger District:—''*The Daily Independent*'', published Monday, Wednesday, Thursday, Friday, and Saturday in Ashland, Kentucky; ''*Lexington Herald-Leader*'', published daily in Lexington, Kentucky.

London Ranger District:—''*The Sentinel- Echo*'', published weekly (Wednesday) in London, Kentucky; ''*Lexington Herald-Leader*'', published daily in Lexington, Kentucky.

Redbird Ranger District:—''*Manchester Enterprise*'', published weekly (Wednesday) in Manchester, Kentucky; ''*Lexington Herald-Leader*'', published daily in Lexington, Kentucky.

Stearns Ranger District:—''*McCreary County Voice*'', published weekly (Thursday) in Whitley City, Kentucky; ''*Lexington Herald-Leader*'', published daily in Lexington, Kentucky.

El Yunque National Forest, Puerto Rico

Forest Supervisor Decisions

''*El Nuevo Dia*'', published daily in Spanish in San Juan, Puerto Rico.

''*San Juan Daily Star*'', published daily in English in San Juan, Puerto Rico.

National Forests in Florida

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District in the National Forests in Florida or Florida National Scenic Trail land outside Ranger Districts:—''*The Tallahassee Democrat*'', published daily in Tallahassee, FL. Legal notices affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Apalachicola Ranger District:—''*Calhoun-Liberty Journal*'', published weekly (Wednesday) in Bristol, Florida.

Lake George Ranger District:—''*The Ocala Star Banner*'', published daily in Ocala, Florida.

Osceola Ranger District:—''*The Lake City Reporter*'', published daily (except Sunday) in Lake City, Florida.

Seminole Ranger District:—''*The Daily Commercial*'', published daily in Leesburg, Florida.

Wakulla Ranger District:—''*The Tallahassee Democrat*'', published daily in Tallahassee, Florida.

Francis Marion & Sumter National Forests, South Carolina

Forest Supervisor Decisions

''*The State*'', published Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday in Columbia, South Carolina.

District Ranger Decisions

Andrew Pickens Ranger District:—''*The Daily Journal*'', published daily (Tuesday through Saturday) in Seneca, South Carolina.

Enoree Ranger District:—''*Newberry Observer*'', published weekly (Wednesday) in Newberry, South Carolina.

Long Cane Ranger District:—''*Index-Journal*'', published daily in Greenwood, South Carolina.

Francis Marion Ranger District:—''*Post and Courier*'', published daily in Charleston, South Carolina.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

''*Roanoke Times*'', published daily in Roanoke, Virginia.

District Ranger Decisions

Clinch Ranger District:—''*Coalfield Progress*'', published bi-weekly (Tuesday and Fridays) in Norton, Virginia.

North River Ranger District:—''*Daily News Record*'', published daily (except Sunday) in Harrisonburg, Virginia.

Glenwood-Pedlar Ranger District:—''*Roanoke Times*'', published daily in Roanoke, Virginia.

James River Ranger District:—''*Virginian Review*'', published daily (except Sunday) in Covington, Virginia.

Lee Ranger District:—''*Shenandoah Valley Herald*'', published weekly (Wednesday) in Woodstock, Virginia.

Mount Rogers National Recreation Area:—''*Bristol Herald Courier*'', published daily in Bristol, Virginia.

Eastern Divide Ranger District:—''*Roanoke Times*'', published daily in Roanoke, Virginia.

Warm Springs Ranger District:—''*The Recorder*'', published weekly (Thursday) in Monterey, Virginia.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

''*The Town Talk*'', published tri-weekly (Sunday, Wednesday, and Friday) in Alexandria, Louisiana.

District Ranger Decisions

Calcasieu Ranger District:—''*The Town Talk*'', (newspaper of record) published tri-weekly (Sunday, Wednesday, and Friday) in Alexandria, Louisiana; ''*The Leesville Daily Leader*'', (secondary) published tri-weekly (Sunday, Wednesday, and Friday) in Leesville, Louisiana.

Caney Ranger District:—''*Minden Press Herald*'', (newspaper of record) published daily in Minden, Louisiana; ''*Homer Guardian Journal*'', (secondary) published weekly (Wednesday) in Homer, Louisiana.

Catahoula Ranger District:—''*The Town Talk*'', published tri-weekly (Sunday, Wednesday, and Friday) in Alexandria, Louisiana.

Kisatchie Ranger District:—''*Natchitoches Times*'', published tri-weekly (Wednesday, Saturday, and Sunday) in Natchitoches, Louisiana.

Winn Ranger District:—''*Winn Parish Enterprise*'', published weekly (Wednesday) in Winnfield, Louisiana.

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

''*The Paducah Sun*'', published daily in Paducah, Kentucky.

National Forests in Mississippi

Forest Supervisor Decisions

''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

District Ranger Decisions

Bienville Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

Chickasawhay Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

Delta Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

De Soto Ranger District:—''*Clarion Ledger*'', published daily in Jackson, Mississippi.

Holly Springs Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

Homochitto Ranger District:—''*Clarion- Ledger*'', published daily in Jackson, Mississippi.

Tombigbee Ranger District:—''*Clarion- Ledger*'', published daily in Jackson, Mississippi.

National Forests in North Carolina

Forest Supervisor Decisions

''*The Asheville Citizen-Times*'', published daily, Wednesday thru Sunday, (except Monday and Tuesday), in Asheville, North Carolina.

District Ranger Decisions

Appalachian Ranger District:—''*The Asheville Citizen-Times*'', published daily (Wednesday thru Sunday, except Monday and Tuesday) in Asheville, North Carolina.

Cheoah Ranger District:—''*Graham Star*'', published weekly (Thursdays) in Robbinsville, North Carolina.

Croatan Ranger District:—''*The Sun Journal*'', published daily in New Bern, North Carolina.

Grandfather Ranger District:—''*McDowell News*'', published daily in Marion, North Carolina.

Nantahala Ranger District:—''*The Franklin Press*'', published weekly (Wednesday) in Franklin, North Carolina.

Pisgah Ranger District:—''*The Asheville Citizen-Times*'', published daily (Wednesday thru Sunday, except Monday and Tuesday), in Asheville, North Carolina.

Tusquitee Ranger District:—''*Cherokee Scout*'', published weekly (Wednesdays) in Murphy, North Carolina.

Uwharrie Ranger District:—''*Montgomery Herald*'', published weekly (Wednesdays) in Troy, North Carolina.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

''*Arkansas Democrat-Gazette*'', published weekly (Sunday) in Little Rock, Arkansas.

District Ranger Decisions

Caddo-Womble Ranger District:—''*Arkansas Democrat-Gazette*'', published weekly (Sunday) in Little Rock, Arkansas.

Jessieville-Winona-Fourche Ranger District:—''*Arkansas Democrat-Gazette*'', published weekly (Sunday) in Little Rock, Arkansas.

Mena-Oden Ranger District:—''*Arkansas Democrat-Gazette*'', published weekly (Sunday) in Little Rock, Arkansas.

Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak):—''*McCurtain Daily Gazette*'', published tri-weekly (Tuesday, Thursday, and Saturday) in Idabel, Oklahoma.

Poteau-Cold Springs Ranger District:—''*Arkansas Democrat-Gazette*'', published weekly (Sunday) in Little Rock, Arkansas.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions

''*The Courier*'', published daily (Tuesday through Sunday) in Russellville, Arkansas.

District Ranger Decisions

Bayou Ranger District:—''*The Courier*'', published daily (Tuesday through Sunday) in Russellville, Arkansas.

Boston Mountain Ranger District:—''*Southwest Times Record*'', published daily in Fort Smith, Arkansas.

Buffalo Ranger District:—''*The Courier*'', published daily (Tuesday through Sunday) in Russellville, Arkansas.

Magazine Ranger District:—''*Southwest Times Record*'', published daily in Fort Smith, Arkansas.

Pleasant Hill Ranger District:—''*Johnson County Graphic*'', published weekly (Wednesday) in Clarksville, Arkansas.

St. Francis National Forest:—''*The Daily World*'', published bi-weekly (Tuesday and Friday) in Helena, Arkansas.

Sylamore Ranger District:—''*Stone County Leader*'', published weekly (Wednesday) in Mountain View, Arkansas.

National Forests and Grasslands in Texas

Forest Supervisor Decisions

''*The Lufkin Daily News*'', published daily in Lufkin, Texas.

District Ranger Decisions

Angelina National Forest:—''*The Lufkin Daily News*'', published daily in Lufkin, Texas.

Caddo & LBJ National Grasslands:—''*Denton Record-Chronicle*'', published daily in Denton, Texas.

Davy Crockett National Forest:—''*The Lufkin Daily News*'', published daily in Lufkin, Texas.

Sabine National Forest:—''*The Lufkin Daily News*'', published daily in Lufkin, Texas.

Sam Houston National Forest:—''*The Courier*'', published daily in Conroe, Texas.

Date: November 23, 2021.

Barnie Gyant,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–25974 Filed 11–29–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–79–2021]

Foreign-Trade Zone (FTZ) 138—Columbus, Ohio; Notification of Proposed Production Activity; Fluvitex USA, Inc. (Quilts, Comforters and Cushions) Groveport, Ohio

Fluvitex USA, Inc., submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Groveport, Ohio under FTZ 138. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 23, 2021.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status materials and specific finished products 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: Plain cotton quilts and comforters; other quilts and comforters; cotton pillows and cushions; and, non-cotton pillows and cushions (duty rate ranges from 4.4% to 12.8%).

The proposed foreign-status materials include: Recycled hollow conjugated and siliconized 100% polyester fiber—64mm cut length, density 7 deniers, 32mm cut length, density 7 deniers and 64mm cut length, density 15 deniers; recycled polyester microfiber—32mm cut length, 0.9 deniers and 10mm cut length, 6.1 decitex; lyocell fibers, 60mm cut length, 6.7 deniers; STRA FABRIC—recycled 65% polyester 35% cotton blend fabric (bleached and dyed)—construction is yarn number 45 (mass divided per unit length) warp × 45 weft, 110 threads per inch (warp) and 76 threads per inch (weft), generates a weight of 100 grams per square meter; PLUS FABRIC and PLUS DOTS FABRIC—55% tencel-natural fiber: viscose and 45% cotton blend (non-printed and printed fabric)—construction is yarn number 40 warp × 40 weft, 140 threads per inch (warp) and 96 threads per inch (weft), construction generates a weight of 140 grams per square meter; 100% polyester fabric; 100% polypropylene nonwoven fabric; 100% polyester pillow covers; sac/bags of cotton for packing of certain pillows; cotton pillow covers; cotton pillow shells; polyester pillow shells; and, polybags (duty rate ranges from duty-free to 14.9%). The request indicates that certain materials are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

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 January 10, 2022.

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 Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: November 24, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–26051 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 211123–0244]

XRIN 0694–XC088

Request for Public Comments Regarding Areas and Priorities for U.S. and EU Export Control Cooperation Under the Trade and Technology Council

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry, request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) requests public comments regarding areas and priorities for U.S. and EU export control cooperation to help inform the work of the U.S–EU Trade and Technology Council (TTC) Export Control Working Group. Comments should address ways in which existing U.S. and/or European Union dual-use export control policies and practices may be more transparent, more efficient and effective, more convergent, and fit for today's challenges, in particular with regards to the control of emerging technologies.

DATES: Comments must be received by BIS no later than January 14, 2022.

ADDRESSES: Comments may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The regulations.gov ID for this rule is BIS–2021–0044. All relevant comments (including any personally identifying information) will be made available for public inspection and copying. All filers using the portal should use the name of the person or entity submitting the comments as the name of their files.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, by phone at (202) 482–0092, or by email at *eileen.albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2021, President Biden and European Commission President Ursula von der Leyen launched the U.S.-EU Trade and Technology Council at the U.S.-EU Summit in Brussels.

Together, the United States and the European Union account for a quarter of global trade and almost half of global GDP, with U.S.-EU two-way trade in goods and services amounting to $1.1 trillion in 2019. In view of this, the Trade and Technology Council (TTC) serves as a forum for the United States and the European Union to coordinate approaches to key global trade, economic, and technology issues, and to deepen transatlantic trade and economic relations based on shared democratic values.

The main goals of the TTC are to expand and deepen bilateral trade and investment; avoid new technical barriers to trade; cooperate on key policies on technology, digital issues and supply chains; support collaborative research; cooperate on the development of compatible and international standards; cooperate on regulatory policy and enforcement; and promote innovation and leadership by U.S. and EU firms.

The TTC's ten working groups provide a framework for tackling challenges and advancing work aligned with some of our shared trade and technology priorities, such as cooperation on technology standards, global trade challenges and supply chain security, climate and clean technology, Information and Communications Technology (ICT) security and competitiveness, data governance and technology platforms, the misuse of technology threatening security and human rights, export controls, investment screening, and access to, and use of, digital technologies by small and medium enterprises.

On September 29, 2021, the U.S.-EU TTC met for the first time. The United States and the European Union reaffirmed the TTC's objectives to: Coordinate approaches to key global technology, economic, and trade issues; and deepen transatlantic trade and economic relations, basing policies on shared democratic values.

Under the TTC's Export Control Working Group, the United States and the European Union are seeking to enhance their cooperation in the following areas:

Technical consultations on current and upcoming legislative and regulatory developments to promote the global convergence of controls and ensure legal security for U.S. and EU companies, including regular adjustments to control lists and specific license exceptions/General Export Authorizations, development of guidelines, as well as review of relevant regulatory developments in third countries (*i.e.,* not the United States or a member state of the European Union);

Technical consultations and development of convergent control approaches on sensitive dual-use technologies, as appropriate;

Information exchange on risks associated with: (1) The export of sensitive technologies to destinations and entities of concern, exchange of best practices on the implementation and licensing for listed or non-listed sensitive items; and (2) technology transfers and dual-use research of concern and exchange of best practices to support the effective application of controls while facilitating research collaboration between U.S. and EU research organizations;

Technical consultations on compliance and enforcement approaches (*i.e.,* legal and regulatory basis, institutional and administrative arrangements) and actions;

Capacity building assistance to third countries to develop appropriate capabilities to implement guidelines and lists of multilateral export control regimes, appropriate export control policies and practices, as well as relevant enforcement measures; and

Technical consultations regarding multilateral and international cooperation, including prior to the introduction of controls outside the multilateral regimes, as appropriate.

Comments on ways in which existing U.S. and/or European Union dual-use export control policies and practices may be more transparent, more efficient and effective, more convergent, and fit for today's challenges, in particular with regards to the control of emerging technologies from all interested persons are welcome and will assist BIS in developing ideas and proposals, as well as facilitate a productive dialogue with the European Union. Comments providing specific and concrete examples where further convergence in U.S. and EU export control practices and policies could enhance international security and the protection of human rights, and support a global level-playing field and joint technology development and innovation, would be particularly helpful.

Additionally, the U.S. and European Union held a joint virtual outreach for stakeholders on October 27, 2021 and received an initial round of comments from participants representing the U.S.

and EU private and nongovernment sectors. In summary, speakers at the virtual outreach event provided input including, but not limited to, the view that export controls should be implemented on a multilateral basis; that extraterritorial application of U.S. export controls creates regulatory burdens on European stakeholders and discourages European entities from collaborating with U.S. counterparts, creating incentives to avoid U.S. technology or, in some cases, hire U.S. persons; and that there is a need to address the challenges associated with the fast pace of innovation and quickly evolving emerging technologies by developing a holistic approach that will protect and promote these technologies. A further description of the topics covered in the stakeholder event will be posted on BIS's website.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–26106 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) were sold at less than normal value by certain exporters during the period of review (POR) November 1, 2019, through October 31, 2020.

DATES: Applicable November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2021, Commerce published in the **Federal Register** the preliminary results of the 2019–2020 administrative review of the antidumping duty order on diamond sawblades from China.[1] We invited interested parties to comment on the *Preliminary Results* and we received a case brief on behalf of Husqvarna (Hebei) Co., Ltd. (Husqvarna) [2] and comments submitted by the Diamond Sawblades Manufacturers' Coalition (DSMC).[3] On September 1, 2021, Husqvarna requested that Commerce conduct a hearing and subsequently, on September 24, 2021, withdrew its request for a hearing.[4] The administrative review covers 53 companies, inclusive of the two mandatory respondents, Jiangsu Fengtai Single Entity (Jiangsu Fengtai) and Zhejiang Wanli Tools Group Co., Ltd. (Zhejiang Wanli).[5] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[6]

Scope of the Order

The products covered by this order [7] are diamond sawblades. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by interested parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an 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.*

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily determined that five companies, Bosun Tools Co., Ltd., Chengdu Huifeng New Material Technology Co., Ltd., Danyang Weiwang Tools Manufacturing Co., Ltd., Weihai Xiangguang Mechanical Industrial Co., Ltd., and Wuhan Wanbang Laser Diamond Tools Co., Ltd., which have been eligible for separate rates in previous segments of the proceeding and are subject to this review, did not have any shipments of subject merchandise during the POR.[8] No party commented on the *Preliminary Results* regarding our no-shipments determination with respect to these five companies. Therefore, for the final results of review, we continue to find that these companies did not have any shipments of subject merchandise during the POR and will issue appropriate instructions to CBP based on these final results.

In the *Preliminary Results,* based on information on the record, we preliminarily found that Husqvarna had entries of subject merchandise during the POR. Further, because it did not file a separate rate application or separate rate certification (SRC), we preliminarily considered Husqvarna to be part of the China-wide entity. Based on additional information placed on the record since the *Preliminary Results,* we find that Husqvarna did not have any shipments of subject merchandise during the POR [9] and therefore, we will issue appropriate instructions to CBP based on the final results of review.

Changes Since the Preliminary Results

Based on a review of the record and comments received from Husqvarna and DSMC regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, for the final results of review, we made a change to the margin assigned to Xiamen ZL Diamond Technology Co.,

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 41446 (August 2, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Husqvarna's Letter, ''Diamond Sawblades and Parts Thereof from China: Case Brief,'' dated September 1, 2021.

[3] *See* DSMC's Letter, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Letter in Lieu of Case Brief,'' dated September 1, 2021 (DSMC Letter).

[4] *See* Husqvarna's Letters, ''Diamond Sawblades and Parts Thereof from China: Request for Hearing,'' dated September 1, 2021; and ''Diamond Sawblades and Parts Thereof from China: Withdrawal of Hearing Request,'' dated September 24, 2021.

[5] *See* Memorandum, ''Antidumping Duty Administrative Review of Diamond Sawblades and Parts Thereof from the People's Republic of China Administrative Review 2019–2020: Respondent Selection,'' dated March 2, 2021.

[6] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009) (*Order*).

[8] *See* the ''Separate Rates'' section of the Preliminary Decision Memorandum.

[9] *See* Issues and Decision Memorandum at Comment 1.

Ltd. (Xiamen ZL) and determined that Husqvarna had no shipments during the POR. For a discussion of the above-referenced changes, *see* the ''Changes Since the Preliminary Results'' section of the Issues and Decision Memorandum.

Separate Rate for Non-Selected Company

In the *Preliminary Results,* we found that evidence provided by one respondent, Xiamen ZL, supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to this company.[10] Since the issuance of the *Preliminary Results,* we received comments from DSMC regarding Xiamen ZL's separate rate eligibility.[11] However, for the final results of review, we continue to find that Xiamen ZL is eligible to receive a separate rate in this review. For further discussion, *see* the Issues and Decision Memorandum.

In the *Preliminary Results,* because we denied the separate rate eligibility for the two respondents selected for individual examination, Jiangsu Fengtai and Zhejiang Wanli, and treated them as part of the China-wide entity, we preliminarily applied to the non-selected respondent the separate rate assigned to eligible respondents in the last completed administrative review, which at the time was 0.00 percent.[12] However, since the *Preliminary* Results, Commerce issued the final results of the 2018–2019 administrative review of diamond sawblades from China.[13] Thus, for the final results of review, we find it appropriate to assign the separate rate assigned to eligible respondents in the *2018–2019 Final Results* (currently the most recently completed administrative review) as the dumping margin for the non-selected separate rate respondent, *i.e.,* 41.03 percent.

China-Wide Entity

As stated in the *Preliminary Results,* because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate (*i.e.,* 82.05 percent) is not subject to change.[14] Aside from the no-shipment and separate rate companies discussed above, Commerce considers all other companies for which a review was requested (which did not file a separate rate application) listed in Appendix II to this notice, to be part of the China-wide entity.[15] Additionally, as discussed above, because we denied separate rate eligibility for Jiangsu Fengtai and Zhejiang Wanli, these two companies are also part of the China-wide entity.

Final Results of the Administrative Review

Commerce determines that the following weighted-average dumping margin exists for the administrative review covering the period November 1, 2019, through October 31, 2020:

Exporters: Separate rate applicable to the following non-selected companies	Weighted-average dumping margin (percent)
Xiamen ZL Diamond Technology Co., Ltd	41.03

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of a review 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 Commerce denied the separate rate eligibility for the two respondents selected for individual examination and treated them as part of the China-wide entity, there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), 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.[16] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these 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).

For the non-selected respondent that received a separate rate, Xiamen ZL, we will instruct CBP to apply an antidumping duty assessment rate of 41.03 percent to all entries of subject merchandise that entered the United States during the POR. For the six companies that we determined had no reviewable entries of the subject merchandise in this review period, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate, 82.05 percent. For entries of subject merchandise during the POR which were exported by the companies listed in Appendix II of this notice, we will instruct CBP to apply the antidumping duty assessment rate of the China-wide entity to all entries of subject merchandise exported by these companies.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the company listed above that has a separate rate, the cash deposit rate will be the rate established in these final results of review for the exporter as listed above; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

[10] *See Preliminary Results* Preliminary Decision Memorandum at 6–7.

[11] *See* DSMC Letter.

[12] *See Preliminary Results* Preliminary Decision Memorandum at 7.

[13] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 46823 (August 20, 2021).

[14] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 32344, 32345 (June 8, 2015).

[15] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 1329, 1331–32 (January 11, 2018) (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.''); *see also* Appendix II for the list of companies that are subject to this administrative review that are considered to be part of the China-wide entity.

[16] *See* 19 CFR 351.212(b)(1).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement 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 Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: November 23, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Discussion of the Issues
VI. Recommendation

Appendix II

Companies that are subject to this administrative review that are considered to be part of the China-wide entity are:

1. ASHINE Diamond Tools Co., Ltd.
2. Danyang City Ou Di Ma Tools Co., Ltd.
3. Danyang Hantronic Import & Export Co., Ltd.
4. Danyang Huachang Diamond Tools Manufacturing Co., Ltd.
5. Danyang Like Tools Manufacturing Co., Ltd.
6. Danyang NYCL Tools Manufacturing Co., Ltd.
7. Danyang Tongyu Tools Co., Ltd.
8. Danyang Tsunda Diamond Tools Co., Ltd.
9. Diamond Tools Technology (Thailand) Co., Ltd.
10. Fujian Quanzhou Aotu Precise Machine Co., Ltd.
11. Guilin Tebon Superhard Material Co., Ltd.
12. Hangzhou Deer King Industrial and Trading Co., Ltd.
13. Hangzhou Kingburg Import & Export Co., Ltd.
14. Hebei XMF Tools Group Co., Ltd.
15. Henan Huanghe Whirlwind Co., Ltd.
16. Henan Huanghe Whirlwind International Co., Ltd.
17. Hong Kong Hao Xin International Group Limited
18. Hubei Changjiang Precision Engineering Materials Technology Co., Ltd.
19. Hubei Sheng Bai Rui Diamond Tools Co., Ltd.
20. Huzhou Gu's Import & Export Co., Ltd.
21. Jiangsu Fengtai Single Entity *
22. Jiangsu Huachang Diamond Tools Manufacturing Co., Ltd.
23. Jiangsu Inter-China Group Corporation
24. Jiangsu Yaofeng Tools Co., Ltd.
25. Jiangsu Youhe Tool Manufacturer Co., Ltd.
26. Orient Gain International Limited
27. Pantos Logistics (HK) Company Limited
28. Protec Tools Co., Ltd.
29. Pujiang Talent Diamond Tools Co., Ltd.
30. Qingdao Hyosung Diamond Tools Co., Ltd.
31. Qingdao Shinhan Diamond Industrial Co., Ltd.
32. Qingyuan Shangtai Diamond Tools Co., Ltd.
33. Quanzhou Sunny Superhard Tools Co., Ltd.
34. Quanzhou Zhongzhi Diamond Tool Co., Ltd.
35. Rizhao Hein Saw Co., Ltd.
36. Saint-Gobain Abrasives (Shanghai) Co., Ltd.
37. Shanghai Jingquan Industrial Trade Co., Ltd.
38. Shanghai Starcraft Tools Co., Ltd.
39. Shanghai Vinon Tools Industrial Co.
40. Sino Tools Co., Ltd.
41. Wuhan Baiyi Diamond Tools Co., Ltd.
42. Wuhan Sadia Trading Co., Ltd.
43. Wuhan ZhaoHua Technology Co., Ltd.
44. Zhejiang Wanli Tools Group Co., Ltd.*
45. ZL Diamond Technology Co., Ltd.
46. ZL Diamond Tools Co., Ltd.

* Selected as mandatory respondents, these companies were found to be part of the China-wide entity in the instant review.

[FR Doc. 2021–26023 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia) have been made below normal value during the period of review (POR), November 1, 2019, through October 31, 2020. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on MSG from Indonesia covering two respondents: PT. Cheil Jedang Indonesia (CJ Indonesia) and PT Miwon Indonesia (Miwon).[1] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as the appendix to this notice. On July 16, 2021, we extended the deadline for these preliminary results until no later than November 30, 2021.[3]

Scope of the Order [4]

The merchandise covered by this *Order* is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in the *Order* when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 511 (January 6, 2021) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Monosodium Glutamate from the Republic of Indonesia; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See* Memorandum, ''Monosodium Glutamate from Indonesia: Extension of Deadline for Preliminary Results of Review,'' dated July 16, 2021.

[4] *See Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 70505 (November 26, 2014) (*Order*).

various seasonings. Further, MSG is included in the *Order* regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins for the period November 1, 2019, through October 31, 2020:

Manufacturer/exporter	Weighted-average margin (percent)
PT. Cheil Jedang Indonesia	0.00
PT Miwon Indonesia	3.14

Disclosure and Public Comment

Commerce intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may not be filed later than five days after the time limit for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each brief: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6] Executive summaries should be limited to five pages total, including footnotes.[7]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, Commerce will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS 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 the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8] If the weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), then Commerce will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the weighted-average dumping margin is zero or *de minimis* in the final results, or if an importer-specific assessment rate is zero or *de minimis* in the final results, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise that entered the United States during the POR that were produced by the respondents for which the respondents did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 6.19 percent,[9] if there is no rate for the intermediate company(ies) involved in the transaction.[10] The final results of this review shall be the basis for the assessment of antidumping duties on entries of subject merchandise covered by the final results of this review, where applicable.

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 deposit requirements will be effective for all shipments of MSG from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.19 percent, the all-others rate established in the investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results

[5] *See* 19 CFR 351.309(d)(1).

[6] *See* 19 CFR 351.309(c)(2), (d)(2).

[7] *Id.*

[8] *See* 19 CFR 351.212(b).

[9] *See Order.*

[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.*

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 also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: November 23, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Normal Value
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2021–26019 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–913, C–821–834]

Oil Country Tubular Goods From the Republic of Korea and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Paul Litwin (Republic of Korea (Korea)) and Theodore Pearson (Russian Federation (Russia)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6002 and (202) 482–2631, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2021, the Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations of imports of oil country tubular goods (OCTG) from Korea and Russia.[1] Currently, the preliminary determinations are due no later than December 30, 2021.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On November 15, 2021, the petitioners submitted timely requests that Commerce postpone the preliminary CVD determinations.[3] The petitioners stated that they request postponement because ''{t}he current deadline is not realistic for several reasons, including, most importantly, the fact that Commerce has not yet received any questionnaire responses.'' [4] In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which these investigations were initiated, *i.e.,* March 7, 2022.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 23, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–26025 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Oil Country Tubular Goods from the Republic of Korea and the Russian Federation: Initiation of Countervailing Duty Investigations,* 86 FR 60210 (November 1, 2021) (*Initiation Notice*).

[2] The petitioners are Bomsan Mannesmann Pipe U.S., Inc.; PTC Liberty Tubulars LLC; U.S. Steel Tubular Products, Inc.; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC; and Welded Tube USA, Inc.

[3] *See* Petitioners' Letter, ''Oil Country Tubular Goods from the Republic of Korea: Request to Extend the Preliminary Determination,'' dated November 15, 2021; *see also* Petitioners' Letter, ''Oil Country Tubular Goods from the Russian Federation: Request to Extend the Preliminary Determination,'' dated November 15, 2021.

[4] *Id.*

[5] Postponing the preliminary determination to 130 days after initiation would place the deadline on Saturday, March 5, 2022. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–872]

Finished Carbon Steel Flanges From India: Final Results of Countervailing Duty Administrative Review; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of finished carbon steel flanges (steel flanges) from India during the period of review (POR), January 1, 2019, through December 31, 2019.

DATES: Applicable November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Moses Song or Natasia Harrison, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7885 or (202) 482–1240, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2020, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**.[1] Although we invited interested parties to comment on the *Preliminary Results*,[2] we received no comments. Accordingly, no decision memorandum accompanies this **Federal Register** notice.

Scope of the Order

The merchandise covered by the scope is steel flanges. For a complete description of the scope, *see* Appendix I.

Companies Not Selected for Individual Review

For the companies not selected for individual examination, because the rates calculated for (Norma) and R.N. Gupta & Co. Ltd. (RNG) are above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Norma and RNG using publicly ranged sales data submitted by the respondents.[3] This is consistent with the methodology that we would use in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Tariff Act of 1930, as amended (the Act).

Final Results of Administrative Review

Although we received no comments from interested parties, we revised the net countervailable subsidy rate for Norma, based on the additional information obtained after *Preliminary Results,* with regard to one particular subsidy program.[4] No other changes were made to the *Preliminary Results.*

We determine the following net countervailable subsidy rate for the period January 1, 2019, through December 31, 2019:

Company	Subsidy rate (percent *ad valorem*)
Norma (India) Ltd.[5]	5.32
R.N. Gupta & Co. Ltd	5.51
Companies Not Selected for Individual Examination[6]	5.44

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the companies listed above at the applicable *ad valorem* assessment rates listed. We intend to issue assessment instructions to CBP 35 days after the date of publication of these final results of review. 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

In accordance with section 751(a)(1) of the Act, we also intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a final 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 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

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 23, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Order

The scope of the order covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or deburring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this review. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this order.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.,* 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.,* flat face, full face, raised face, *etc.*), configuration (*e.g.,* weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term ''carbon steel'' under this scope is steel in which: (a) Iron predominates, by weight, over each of the other contained elements: (b) The carbon

[1] *See Finished Carbon Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review; 2019,* 86 FR 50032 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *Id.* at 50033.

[3] *See* Memorandum, ''Final Results Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated concurrently with this notice.

[4] Shortly after the *Preliminary Results,* we requested additional information to clarify the POR benefit amount that one of Norma's cross-owned entities received concerning the Electricity Duty Exemption Under the State Government of Uttar Pradesh Investment Promotion Scheme/ Infrastructure and Industrial Investment Policy program. We received a timely response from Norma on September 22, 2021, prior to the deadline to submit case briefs (*i.e.,* October 7, 2021) stipulated in the *Preliminary Results.* Based on the information we received, we revised Norma's *ad valorem* subsidy rate of the program at issue. *See* Memorandum, ''Final Results Calculations for Norma (India) Ltd., USK Exports Private Limited, UMA Shanker Khandelwal & Co., and Bansidhar Chiranjilal,'' dated concurrently with this notice.

[5] In this administrative review, Commerce found the following companies to be cross-owned with Norma (India) Ltd.: USK Export Private Limited; Uma Shanker Khandelwal and Co.; and Bansidhar Chiranjilal. *See Preliminary Results* PDM at 6; this finding is unchanged in these final results. This rate applies to all cross-owned companies.

[6] *See* Appendix II.

content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 0.87 percent of aluminum;
(ii) 0.0105 percent of boron;
(iii) 10.10 percent of chromium;
(iv) 1.55 percent of columbium;
(v) 3.10 percent of copper;
(vi) 0.38 percent of lead;
(vii) 3.04 percent of manganese;
(viii) 2.05 percent of molybdenum;
(ix) 20.15 percent of nickel;
(x) 1.55 percent of niobium;
(xi) 0.20 percent of nitrogen;
(xii) 0.21 percent of phosphorus;
(xiii) 3.10 percent of silicon;
(xiv) 0.21 percent of sulfur;
(xv) 1.05 percent of titanium;
(xvi) 4.06 percent of tungsten;
(xvii) 0.53 percent of vanadium; or
(xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

Companies Not Selected for Individual Examination

1. Adinath International
2. Aditya Forge Limited
3. Allena Group
4. Alloyed Steel
5. Balkrishna Steel Forge Pvt. Ltd.
6. Bebitz Flanges Works Private Limited
7. C.D. Industries
8. CHW Forge
9. CHW Forge Pvt. Ltd.
10. Citizen Metal Depot
11. Corum Flange
12. DN Forge Industries
13. Echjay Forgings Limited
14. Falcon Valves and Flanges Private Limited
15. Heubach International
16. Hindon Forge Pvt. Ltd.
17. Jai Auto Pvt. Ltd.
18. Kinnari Steel Corporation
19. Mascot Metal Manufacturers
20. M F Rings and Bearing Races Ltd.
21. Munish Forge Private Limited
22. OM Exports
23. Punjab Steel Works
24. Raaj Sagar Steels
25. Ravi Ratan Metal Industries
26. R. D. Forge
27. Rolex Fittings India Pvt. Ltd.
28. Rollwell Forge Engineering Components and Flanges
29. Rollwell Forge Pvt. Ltd.
30. SHM (ShinHeung Machinery)
31. Siddhagiri Metal & Tubes
32. Sizer India
33. Steel Shape India
34. Sudhir Forgings Pvt. Ltd.
35. Tirupati Forge Pvt. Ltd.
36. Umashanker Khandelwal Forging Limited

[FR Doc. 2021–26050 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 26th Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting the 26th administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China). The period of review (POR) for the administrative review is November 1, 2019, through October 31, 2020. Commerce preliminarily determines that the only mandatory respondent for which a request for review remains, Jining Shunchang Import & Export Co., Ltd. (Shunchang), failed to establish its eligibility for a separate rate and therefore is part of the China-wide entity. We also preliminarily find that the review request made by The Roots Farm Inc. (Roots Farm) was not valid, and accordingly, because it was the sole remaining request for the other mandatory respondent, Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), we have preliminarily rescinded the review with respect to Harmoni. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Leo Ayala or Charles DeFilippo, 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) 482–3945 or (202) 482–3979.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2021, Commerce initiated the twenty-sixth administrative review of antidumping duty order on fresh garlic from China [1] with respect to eighteen companies.[2] Commerce initially selected Harmoni for individual examination.[3] After issuing a standing questionnaire to Roots Farm, and Roots Farm's failure to timely respond, Commerce indicated its intent to preliminarily rescind review of Harmoni, and selected Shunchang as the only respondent subject to individual examination.[4]

Scope of the Order

The products subject to the *Order* are all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the *Order* are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this *Order,* please *see* the ''Scope of the Order'' section in the accompanying Preliminary Decision Memorandum, hereby adopted by this notice.[5]

Partial Rescission of Administrative Review

On March 23, 2021, all review requests were timely withdrawn for fifteen companies.[6] Commerce is, therefore, partially rescinding this administrative review with respect to the companies listed in Appendix I, in accordance with 19 CFR 351.213(d)(1).

Preliminary Rescission of Administrative Review

As discussed in the accompanying Preliminary Decision Memorandum, Commerce has preliminarily determined that the review request from Roots Farm was invalid *ab initio,* and is preliminarily rescinding the

[1] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 511, 515 (January 6, 2021) (*Initiation Notice*).

[3] *See* Memorandum, ''Selection of Respondents for Individual Examination,'' dated April 12, 2021.

[4] *See* Memorandum, ''Intent to Preliminarily Rescind, in Part,'' dated July 6, 2021.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 2019–2020 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Best Buy Letter, ''Fresh Garlic from the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated February 17, 2021; *see also* Petitioners' Letter, ''26th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Partial Withdrawal of Review Request,'' dated March 23, 2021; and Harmoni's Letter, ''Harmoni Withdrawal of Review Request: Twenty-Sixth Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A–570–831),'' dated March 26, 2021.

administrative review with respect to one mandatory respondent, Harmoni.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.214.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix II to this notice.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[7] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* $4.71/kg) is not subject to change. Aside from the companies for which the review is being rescinded or preliminarily rescinded, Commerce considers all other companies[8] for which a review was requested, and which did not preliminarily qualify for a separate rate, to be part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Results of Administrative Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the administrative review covering the period November 1, 2019, through October 31, 2020:

Exporter	Weighted-average margin (dollars per kilogram)
China-Wide Entity[9]	4.71

Public Comment and Opportunity To Request a Hearing

Pursuant to 19 CFR 351.309(c)(1)(ii), case briefs or other written comments may be submitted within thirty days after the date on which this notice is published in the **Federal Register**, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All electronically filed documents must be received successfully and timely in their entirety by Commerce's electronic records system, ACCESS.

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

Commerce intends to issue the final results of this review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce will direct CBP to assess rates based on the per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. Commerce intends to issue assessment instructions to CBP 35 days after the publication date of the final results of review.

Commerce announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2) of the Act: (1) For the companies listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 4.71 U.S. dollars per kilogram; and (4) for all non-

[7] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[8] The companies that are part of the China-wide entity are Jining Shunchang Import & Export Co., Ltd. and Jining Shunchang Food Co., Ltd.

[9] *Id.*

[10] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These requirements, when imposed, shall remain in effect until further notice.

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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: November 23, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Companies for Which Administrative Reviews Have Been Rescinded

1. Hengshui Chaoran International Trade
2. Jining Greenstream Fruits & Vegetables Co., Ltd.
3. Jinxiang Wanxing Garlic Co., Ltd.
4. Laiwu Manhing Vegetables Fruits Corp.
5. Linyi Mingda Food Co., Ltd.
6. China Jiangsu International Economic Technical Cooperation Corporation
7. Hebei Holy Flame International
8. Jining Alpha Food Co. Ltd.
9. Jinxiang Qingtian Garlic Industries
10. Qingdao Maycarrier Import & Export Co., Ltd.
11. Qingdao Ritai Food Co., Ltd.
12. Shandong Happy Foods Co., Ltd.
13. Shijiazhuang Goodman Trading Co., Ltd.
14. Weifang Hongqiao International Logistics Co., Ltd.
15. Yingxin (Wuqiang) International Trade

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2021–26022 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880; A–201–847; A–489–824]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea, Mexico, and the Republic of Turkey: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Korea (Korea), Mexico, and the Republic of Turkey (Turkey) would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney or Kate Johnson, 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) 482–2285 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2021, Commerce published the notice of initiation of the first sunset reviews of the orders on certain HWR pipes and tubes from Korea, Mexico, and Turkey [1] pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[2] On August 17, 2021, Commerce received a notice of intent to participate from Atlas Tube, a division of Zekelman Industries, Bull Moose Tube Company, Maruichi American Corporation, Searing Industries, Vest, Inc., and Nucor Tubular Products Inc. (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] These companies claimed interested party status under section 771(9)(C) of the Act, and 19 CFR 351.102(b)(29)(v) as domestic manufacturers or producers of HWR pipes and tubes in the United States.

On September 1, 2021, Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3).[4] No respondent interested party submitted a substantive response within the 50-day deadline. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting expedited (120-day) sunset reviews of the *Orders.*

Scope of the Orders

The merchandise covered by the *Orders* is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865 (September 13, 2016) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 41439 (August 2, 2021).

[3] *See* Atlas Tube, Bull Moose Tube Company, Maruichi American Corporation, Searing Industries, and Vest Inc.'s Letters, ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea,'' dated August 17, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,'' dated August 17, 2021; ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey,'' dated August 17, 2021; *see also* Nucor Tubular's Letters ''Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Notice of Intent to Participate,'' dated August 17, 2021; ''Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Notice of Intent to Participate,'' dated August 17, 2021; and ''Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Notice of Intent to Participate,'' dated August 17, 2021.

[4] *See* Domestic Interested Parties' Letters, ''First Five-Year (''Sunset'') Review of the Antidumping Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated September 1, 2021; ''First Five-Year (''Sunset'') Review of the Antidumping Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated September 1, 2021; ''First Five-Year (''Sunset'') Review of the Antidumping Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated September 1, 2021.

description of the scope of the *Orders* is dispositive.[5]

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the accompanying Issues and Decision Memorandum.[6] 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.* A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. A complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the AD orders on HWR pipes and tubes from Korea, Mexico, and Turkey would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the weighted-average dumping margins likely to prevail are up to 3.82 percent for Korea, 5.21 percent for Mexico, and 35.66 percent for Turkey.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to 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. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act and 19 CFR 351.218.

[5] For a full description of the scope of the *Orders, see* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See* Issues and Decision Memorandum.

Dated: November 23, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–26021 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of a partially closed Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a partially closed meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, December 16, 2021, from 10:00 a.m. to 3:00 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Friday, December 10, 2021.

ADDRESSES: The meeting will be held virtually via Microsoft Teams. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted via email to Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, at *jonathan.chesebro@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–482–1297; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 5, 2020. This meeting is being convened under the seventh charter of the CINTAC.

Topics to be considered: The agenda for the CINTAC meeting on Thursday, December 16, 2021, is as follows:

Closed Session (10:00 a.m.–1:00 p.m.)—Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3). The session will be closed to the public pursuant to Section 10(d) of FACA as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, and in accordance with Section 552b(c)(4) and Section 552b(c)(9)(B) of Title 5, United States Code, which authorize closure of meetings that are ''likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and ''likely to significantly frustrate implementation of a proposed agency action,'' respectively. The part of the meeting that will be closed will address (1) nuclear cooperation agreements; (2) encouraging ratification of the Convention on Supplementary Compensation for Nuclear Damage; and (3) identification of specific trade barriers impacting the U.S. civil nuclear industry.

Public Session (1:00 p.m.–3:00 p.m.)—Subcommittee work, review of deliberative recommendations, and opportunity to hear from members of the public.

Members of the public wishing to attend the public session of the meeting must notify Mr. Chesebro at the contact information above by 5:00 p.m. EST on Friday, December 10, 2021 in order to pre-register to participate. Please specify

any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Friday, December 10, 2021. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before or after the meeting. Comments may be submitted to Mr. Jonathan Chesebro at *Jonathan.chesebro@trade.gov.* For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Friday, December 10, 2021. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: November 24, 2021.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2021–26078 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–914]

Certain Superabsorbent Polymers From the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 22, 2021.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo or Elfi Blum; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3979 or (202) 482–0197, respectively.

SUPPLEMENTARY INFORMATION:

Petition

On November 2, 2021, the Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of certain superabsorbent polymers (SAP) from the Republic of Korea (Korea), filed in proper form on behalf of the Ad Hoc Coalition of American SAP Producers (the petitioner), whose members are BASF Corporation, Evonik Superabsorber LLC, and Nippon Shokubai America Industries, Inc., domestic producers of SAP.[1]

On November 4, 2021, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed a response to these requests on November 9, 2021.[3] On November 10, 2021, Commerce conducted a teleconference with the petitioner, and the petitioner addressed Commerce's concerns discussed therein with its supplemental response submitted on November 12, 2021.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of SAP from Korea are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the SAP industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(E) of the Act.[5] Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigation.[6]

Period of Investigation

Because the Petition was filed on November 2, 2021, the period of investigation (POI) for this investigation is October 1, 2020, through September 30, 2021, pursuant to 19 CFR 351.204(b)(1).

Scope of the Investigation

The product covered by this investigation is SAP from Korea. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On November 4, 2021, and on November 10, 2021, Commerce requested further information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On November 9 and 12, 2021, the petitioner revised the scope.[8] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period of time for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Superabsorbent Polymers from the Republic of Korea,'' dated November 2, 2021 (Petition); *see also* Petitioner's Letter, ''Amendment to the Petition for the Imposition of Antidumping Duties on Imports of Certain Superabsorbent Polymers from the Republic of Korea,'' dated November 3, 2021 (Amended Petition) (collectively, Petition, as amended).

[2] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Superabsorbent Polymers from the Republic of Korea: Supplemental Questions,'' dated November 4, 2021 (Supplemental Questionnaire).

[3] *See* Petitioner's Letter, ''Certain Superabsorbent Polymers from the Republic of South Korea—Responses to Supplemental Questions,'' dated November 9, 2021 (Petition Supplement).

[4] *See* Memorandum, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Superabsorbent Polymers from the Republic of Korea: Phone Call with Counsel to the Petitioner,'' dated November 10, 2021 (Phone Memo); and Petitioner's Letter, ''Certain Superabsorbent Polymers from the Republic of Korea—Responses to Second Supplemental Questionnaire,'' dated November 12, 2021 (Scope Supplement).

[5] *See* Petition, as amended, at Volume I at 2.

[6] *See infra,* section on ''Determination of Industry Support for the Petition.''

[7] *See* Supplemental Questionnaire at 3; *see also* Phone Memo.

[8] *See* Petition Supplement at 7–8; *see also* Scope Supplement at 5–6.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

parties submit such comments by 5:00 p.m. Eastern Time (ET) on December 13, 2021, which is the next business day after 20 calendar days from the signature date of this notice.[11] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 23, 2021, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the record of this AD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of SAP to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe SAP, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on December 13, 2021, which is the next business day after 20 calendar days from the signature date of this notice.[13] Any rebuttal comments must be filed by 5:00 p.m. ET on December 23, 2021. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[16] Based on our analysis of the information submitted on the record, we have determined that SAP, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like

[11] The 20-day deadline falls on December 12, 2021, which is a Sunday. Therefore, in accordance with the *Next Business Day Rule,* the deadline moves to the next business day, December 13, 2021. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2008) (*Next Business Day Rule*).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[13] *See Next Business Day Rule.*

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] *See* Petition, as amended, at Volume I at 8–10.

[17] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, ''Antidumping Duty Investigation Initiation Checklist: Certain Superabsorbent Polymers from the Republic of Korea,'' (AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Certain Superabsorbent Polymers from the Republic of Korea (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2020.[18] The petitioner states that there are no other known U.S. producers of SAP; therefore, the Petition is supported by 100 percent of the U.S. industry.[19] We relied on data provided by the petitioner for purposes of measuring industry support.[20]

On November 15, 2021, we received comments on industry support from LG Chem, Ltd. (LGC), a Korean producer and/or exporter of SAP.[21] The petitioner responded to the industry support comments on November 17, 2021.[22]

Our review of the data provided in the Petition, the Petition Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[23] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[24] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[25] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[26]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[27]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; decline in production and U.S. shipments; adverse impact on capacity utilization; flat employment and decline in hours worked; and decline in financial performance.[28] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[29]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of SAP from Korea. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

U.S. Price

The petitioner based the U.S. price on export price (EP), using pricing information for SAP produced in Korea and sold, or offered for sale, to a U.S. customer during the POI. The petitioner made certain adjustments to delivered U.S. gross price for movement expenses and other expenses, to calculate a net ex-factory U.S. price.[30]

Normal Value[31]

The petitioner obtained pricing information for SAP produced and sold, or offered for sale, in Korea, from a confidential report. The petitioner provided a declaration discussing the methodologies used in the report to calculate home market prices throughout the POI to support the pricing information. As the prices obtained were on a delivered basis, exclusive of value-added tax, the petitioner made deductions for movement expenses.[32]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of SAP from Korea are being, or are likely to be, sold in the United States at LTFV. Based on a comparison of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for SAP from Korea range from 27.20 percent to 48.20.[33]

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of SAP from Korea are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner named three companies in Korea as producers/exporters of SAP.[34] Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number

[18] *See* Petition, as amended, at Volume I at 19 and Exhibit I–9; *see also* Petition Supplement at 8 and Supp. Exhibit I–4.

[19] *See* Petition, as amended, at Volume I at 2–3; *see also* Petition Supplement at 8 and Supp. Exhibits I–2 and I–3.

[20] *See* Petition, as amended, at Volume I at 2–3; *see also* Petition Supplement at 8 and Supp. Exhibit I–4. For further discussion, *see* AD Initiation Checklist at Attachment II.

[21] *See* LGC's Letters, ''Superabsorbent Polymers from South Korea: Entry of Appearance,'' dated November 8, 2021; and ''Certain Superabsorbent Polymers from the Republic of Korea: Comments on Industry Support,'' dated November 15, 2021.

[22] *See* Petitioner's Letter, ''Certain Superabsorbent Polymers from Korea—Response to Comments on Industry Support,'' dated November 17, 2021 (Petitioner's Rebuttal).

[23] *See* AD Initiation Checklist at Attachment II; *see also* section 732(c)(4)(D) of the Act.

[24] *See* AD Initiation Checklist at Attachment II.

[25] *Id.*

[26] *Id.*

[27] *See* Petition, as amended, at Volume I at 11–12 and Exhibits I–5 and I–6.

[28] *Id.* at 12–24 and Exhibits I–4, I–7 through I–10, and I–12 through I–17; *see also* Petition Supplement at 9–10 and Supp. Exhibits I–5, I–6, and II–8.

[29] *See* AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Certain Superabsorbent Polymers from the Republic of Korea (Attachment III).

[30] *See* AD Initiation Checklist; *see also* Petition, as amended, Volume II at 3–6 and Exhibits 6, 9–13; Petition Supplement at 10–13 and Supp. Exhibits II–2—3 and 5.

[31] In accordance with section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[32] *See* AD Initiation Checklist; *see also* Petition, as amended, Volume II at 2–3 and Exhibits 5–7; Petition Supplement at 13–16 and Supp. Exhibits II–4 and 6–7.

[33] *Id.; see also* Petition, as amended, Volume II at 6 and Exhibit 15; Petition Supplement at 17 and Exhibits II–3 and II–8—II–9.

[34] *See* Petition, as amended, at Volume II at Exhibit II–1.

of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the appendix.

On November 17, 2021, Commerce released CBP data on imports of SAP from Korea under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[35] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of Korea via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that subject imports are materially injuring or threatening material injury to a U.S. industry.[36] A negative ITC determination will result in the investigation being terminated.[37] Otherwise, this AD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [38] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[39] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial response to section D of the AD questionnaire.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; Commerce will grant untimely filed requests for the extension of time limits only in limited cases where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning extensions prior to submitting extension requests or factual information in this investigation.[40]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[41] Parties must use the certification formats provided in 19 CFR 351.303(g).[42] Commerce intends to reject factual submissions if the

[35] *See* Memorandum, ''Antidumping Duty Petition on Certain Superabsorbent Polymers from the Republic of Korea: Release of U.S. Customs and Border Protection Data,'' dated November 17, 2021.

[36] *See* section 733(a) of the Act.

[37] *Id.*

[38] *See* 19 CFR 351.301(b).

[39] *See* 19 CFR 351.301(b)(2).

[40] *See* 19 CFR 351.302; *see also, e.g., Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[41] *See* section 782(b) of the Act.

[42] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 22, 2021.

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

Scope of the Investigation

The merchandise covered by this investigation is superabsorbent polymers (SAP), which is cross-linked sodium polyacrylate most commonly conforming to Chemical Abstracts Service (CAS) registry number 9003–04–7, where at least 90 percent of the dry matter, by weight on a nominal basis, corrected for moisture content, is comprised of a polymer with a chemical formula of $(C_3H_3O_2Na_xH_{1-x})_n$, where *x* is within a range of 0.00–1.00 and there is no limit to *n*. The subject merchandise also includes merchandise with a chemical formula of $\{(C_2H_3)COONa_yH_{(1-y)}\}_n$, where *y* is within a range of 0.00–1.00 and there is no limit to *n*. The subject merchandise includes SAP which is fully neutralized as well as SAP that is not fully neutralized.

The subject merchandise may also conform to CAS numbers 25549–84–2, 77751–27–0, 9065–11–6, 9033–79–8, 164715–58–6, 445299–36–5, 912842–45–6, 561012–86–0, 561012–85–9, or 9003–01–4.

All forms and sizes of SAP, regardless of packaging type, including but not limited to granules, pellets, powder, fibers, flakes, liquid, or gel are within the scope of this investigation. The scope also includes SAP whether or not it incorporates additives for anticaking, anti-odor, anti-yellowing, or similar functions.

The scope also includes SAP that is combined, commingled, or mixed with other products after final sieving. For such combined products, only the SAP component is covered by the scope of this investigation. SAP that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries. A combination is excluded from this investigation if the total SAP component of the combination (regardless of the source or sources) comprises less than 50 percent of the combination, on a nominal dry weight basis.

SAP is classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3906.90.5000. SAP may also enter the United States under HTSUS 3906.90.9000 or 3906.10.0000. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2021–26017 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Establishment of the Industrial Advisory Committee and Call for Nominations

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of establishment and call for nominations to serve on the Industrial Advisory Committee.

SUMMARY: The Secretary of Commerce (Secretary), in consultation with the Secretary of Defense, the Secretary of Energy, and the Secretary of Homeland Security, announces the establishment of the Industrial Advisory Committee (the Committee) in accordance with the Federal Advisory Committee Act of 1972, as amended, and the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Act). The Committee shall assess and provide guidance to the Secretary, through the National Institute for Standards and Technology (NIST), on matters relating to microelectronics research, development, manufacturing, and policy. NIST invites and requests nominations of individuals for appointment to the Committee. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Nominations for the Committee will be accepted on an ongoing basis and will be considered as and when vacancies arise.

ADDRESSES: Please submit nominations to Alicia Chambers, Committee Liaison Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899 and Tamiko Ford, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899. Nominations may also be submitted via email to *Alicia.Chambers@nist.gov* and *Tamiko.Ford@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Tamiko Ford, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899. Her email is *Tamiko.Ford@nist.gov* and her phone number is (301) 975–2076.

SUPPLEMENTARY INFORMATION:

Committee Information

The Industrial Advisory Committee (Committee) is established pursuant to section 9906(b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, hereinafter referred to as the Act, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

The Committee shall act in the public interest to provide advice to the Secretary of Commerce through the National Institute of Standards and Technology (NIST) on (1) science and technology needs of the nation's domestic microelectronics industry; (2) the extent to which the strategy developed under section 9906(a)(3) of the Act is helping maintain United States leadership in microelectronics manufacturing; (3) assessment of the research and development programs and activities authorized under section 9906 of the Act; and (4) opportunities for new public-private partnerships to advance microelectronics research, development, and domestic manufacturing. The Committee shall not participate in selecting recipients of federal financial assistance.

Membership

Members of the Committee shall be appointed by the Secretary of Commerce. The Committee shall be composed of not fewer than 12 members who are qualified to provide advice to the United States Government on matters relating to microelectronics research, development, manufacturing, and policy. The membership shall be fairly balanced among representatives of the semiconductor industry, representatives of federal laboratories and academia, and other members. Private sector members of the Committee will serve as representative members. Members of the Committee who are federal officers or employees will serve as regular government employee (RGE) members.

The Committee members serve three-year terms and may serve two consecutive terms at the discretion of the Secretary, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy and that members shall have staggered terms such that the Committee will have approximately one-third new or reappointed members each year. A

member who has served two consecutive full terms is ineligible to serve a third term for a period of one year following the expiration of the second term. Vacancies are filled as soon as highly qualified candidates in a needed area are identified and available to serve.

The Secretary of Commerce shall appoint the Committee Chair and Vice-Chair from among the Committee membership. The tenures of the Chair and Vice-Chair shall be two years and can be modified at the discretion of the Secretary.

Committee members will be reimbursed for travel and per diem as it pertains to official business of the Committee in accordance with 5 U.S.C. 5701 *et seq.* Committee members will serve without compensation, except that federal government employees who are members of the Committee shall remain covered by their compensation system pursuant to 41 CFR 102–3.130(h).

Miscellaneous

1. Meetings will be conducted at least twice a year at the call of the Designated Federal Officer in consultation with the Committee Chair.

2. Generally, Committee meetings are open to the public.

Nomination Information

1. Nominations are sought from all stakeholder areas including, but not limited to, industry, federal laboratories, and academic institutions, in fields relevant to microelectronics research, development, manufacturing, and policy, such as representatives specializing in various stages of microelectronics production and utilization, financing, labor, workforce development, as well as state and local government.

2. Nominees should have established records of distinguished service and shall be eminent in a field or fields described above. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. A resume or biographical sketch should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the candidate agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee. To ensure adequate consideration of relevant perspectives and stakeholders, the Secretary of Commerce will seek to appoint Committee members with a diverse set of backgrounds and experiences. The diverse membership of the Committee assures representation and expertise reflecting the full breadth of the Committee's responsibilities and, where possible, NIST will also consider the ethnic, racial, and gender diversity of the United States.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2021–25986 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Coastal Ocean Program Grants Proposal Application Package

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 June 8, 2021 (86 FR 30410) during a 60-day comment period and on October 8, 2021 (86 FR 56256) for an additional 30-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: NOAA Coastal Ocean Program Grants Proposal Application Package.

OMB Control Number: 0648–0384.

Form Number(s): None.

Type of Request: Regular submission (revision/extension of a current information collection).

Number of Respondents: 1,550.

Average Hours per Response: 30 minutes each for a project summary and current and pending federal support; 6 hours for a semi-annual report; 8 hours for an annual report, 12 hours for a CRP final report, 10.5 hours for the RSP final report; and 1 hour for the milestone Gantt chart.

Total Annual Burden Hours: 2,312.5.

Needs and Uses: This request is for a revision and extension of a currently approved information collection. The National Oceanic and Atmospheric Administration's Coastal Ocean Program (COP), now known as the Competitive Research Program (CRP) under the National Centers for Coastal Ocean Science, provides direct financial assistance through grants and cooperative agreements for research supporting the management of coastal ecosystems and the NOAA RESTORE Science Program (RSP). The statutory authority for COP is Public Law 102–567 Section 201 (Coastal Ocean Program). NOAA was authorized to establish and administer the Restore Science Program, in consultation with the U.S. Fish and Wildlife Service, by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) of the Gulf States Act of 2012 (Pub. L. 112–141, Section 1604). Identified in the RESTORE Act as the Gulf Coast Ecosystem restoration Science, Observation, Monitoring, and Technology Program, the Program is commonly known as the NOAA RESTORE Science Program. In addition to standard government application requirements, applicants for financial assistance are required to submit a project summary form, current and pending form, and a key contacts form for both programs. CRP recipients are required to file annual progress reports and a project final report using CRP formats. The RSP are required to file semi-annual progress reports, a final report, and a Gantt chart showing project milestones using RSP formats. All of these requirements are needed for better evaluation of proposals and monitoring of awards.

Several revisions are being requested for this information collection. The approved annual and final reports for CRP will be revised to include the request for publication digital object identifiers (DOIs). The RSP semi-annual and final reports will be revised to include end-user details. Finally, the Key Contacts Form will be removed from the package as the information contained in this document can be found in the Standard Form (SF)-424 form and Summary Title Page. Therefore, the estimated burden hours will be reduced by 150 hours.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government.

Frequency: Annually, semi-annually, and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: N/A.

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 0648–0384.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–25964 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB543]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Cost Recovery Fee Notice for the Western Alaska Community Development Quota and Trawl Limited Access Privilege Programs

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

ACTION: Notice of standard prices and fee percentage.

SUMMARY: NMFS publishes standard prices and fee percentages for cost recovery for the Amendment 80 Program, the American Fisheries Act (AFA) Program, the Aleutian Islands Pollock (AIP) Program, and the Western Alaska Community Development Quota (CDQ) Program in the Bering Sea Aleutian Islands (BSAI) management area. The fee percentage for 2021 is 1.43 percent for the Amendment 80 Program, 0.25 percent for the AFA inshore cooperatives, zero percent for the AIP program, and 0.83 percent for the CDQ Program. This notice is intended to provide the 2021 standard prices and fee percentages to calculate the required payment for cost recovery fees due by December 31, 2021.

DATES: The standard prices and fee percentages are valid on November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Charmaine Weeks, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires the collection of cost recovery fees for limited access privilege programs and the CDQ Program. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Section 304(d) of the Magnuson-Stevens Act mandates that cost recovery fees not exceed 3 percent of the annual ex-vessel value of fish harvested by a program subject to a cost recovery fee, and that the fee be collected either at the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

NMFS manages the Amendment 80 Program, AFA Program, and AIP Program as limited access privilege programs. On January 5, 2016, NMFS published a final rule to implement cost recovery for these three limited access privilege programs and the CDQ program (81 FR 150). The designated representative (for the purposes of cost recovery) for each program is responsible for submitting the fee payment to NMFS on or before the due date of December 31 of the year in which the landings were made. The total dollar amount of the fee due is determined by multiplying the NMFS published fee percentage by the ex-vessel value of all landings under the program made during the fishing year. NMFS publishes this notice of the fee percentages for the Amendment 80, AFA, AIP, and CDQ programs in the **Federal Register** by December 1 each year.

Standard Prices

The fee liability is based on the ex-vessel value of fish harvested in each program. For purposes of calculating cost recovery fees, NMFS calculates a standard ex-vessel price (standard price) for each species. A standard price is determined using information on landings purchased (volume) and ex-vessel value paid (value). For most groundfish species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery to estimate a standard price for each species. The standard prices are described in U.S. dollars per pound for landings made during the year. The standard prices for all species in the Amendment 80, AFA, AIP, and CDQ programs are provided in Table 1. Each landing made under each program is multiplied by the appropriate standard price to arrive at an ex-vessel value for each landing. These values are summed together to arrive at the ex-vessel value of each program (fishery value).

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2021 FISHING YEAR

Species	Gear type	Reporting period	Standard ex-vessel price per pound ($)
Arrowtooth flounder	All	January to December	0.19
Atka mackerel	All	January to December	0.21
Flathead sole	All	January to December	0.16
Greenland turbot	All	January to December	0.59
CDQ halibut	Fixed gear	January to December	5.39
Pacific cod	Fixed gear	January to December	0.37
	Trawl gear	January to December	0.36
Pacific ocean perch	All	January to December	0.15
Pollock	All	January to December	0.15
Rock sole	All	January to March	0.16
	All	April to December	0.14
Sablefish	Fixed gear	January to December	1.60

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2021 FISHING YEAR—Continued

Species	Gear type	Reporting period	Standard ex-vessel price per pound ($)
Yellowfin sole	Trawl gear	January to December	0.80
	All	January to December	0.15

Fee Percentage

NMFS calculates the fee percentage each year according to the factors and methods described at 50 CFR 679.33(c)(2), 679.66(c)(2), 679.67(c)(2), and 679.95(c)(2). NMFS determines the fee percentage that applies to landings made during the year by dividing the total costs directly related to the management, data collection, and enforcement of each program (direct program costs) during the year by the fishery value. NMFS captures direct program costs through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. For 2021, the direct program costs were tracked from October 1, 2020, to September 30, 2021 (the end of the fiscal year). The 2021 fee percentages for the Amendment 80 and the AFA Programs are more than the fee percentages calculated in 2020. The 2021 fee percentage for the Western Alaska CDQ Program is less than the fee percentage calculated in 2020. The 2021 percentage for the AIP Program was zero since there was no fishery in 2021.

NMFS will provide an annual report that summarizes direct program costs for each of the programs in early 2022. NMFS calculates the fishery value as described under the section Standard Prices.

Amendment 80 Program Standard Prices and Fee Percentage

The Amendment 80 Program allocates total allowable catches (TACs) of groundfish species, other than Bering Sea pollock, to identified trawl catcher/processors in the BSAI. The Amendment 80 Program allocates a portion of the BSAI TACs of six species: Atka mackerel, Pacific cod, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch. Participants in the Amendment 80 sector have established cooperatives to harvest these allocations. Each Amendment 80 cooperative is responsible for payment of the cost recovery fee for fish landed under the Amendment 80 Program. Cost recovery requirements for the Amendment 80 Program are at 50 CFR 679.95.

For most Amendment 80 species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each fishery species. Regulations specify that for rock sole, NMFS shall calculate a separate standard price for two periods—January 1 through March 31, and April 1 through October 31, which accounts for a difference in estimated rock sole prices during the first quarter of the year relative to the remainder of the year. The volume and value information is obtained from the First Wholesale Volume and Value Report and the Pacific Cod Ex-Vessel Volume and Value Report.

Using the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2021 calendar year is 1.43 percent for the Amendment 80 Program. For 2021, NMFS applied the fee percentage to each Amendment 80 species landing that was debited from an Amendment 80 cooperative quota allocation between January 1 and December 31 to calculate the Amendment 80 fee liability for each Amendment 80 cooperative. The 2021 fee payments must be submitted to NMFS on or before December 31, 2021. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.95(a)(3)(iv).

AFA Standard Price and Fee Percentages

The AFA Program allocates the Bering Sea directed pollock fishery TAC to three sectors—catcher/processor, mothership, and inshore. Each sector has established cooperatives to harvest the sector's exclusive allocation. In 2021, the cooperative for the inshore sector is responsible for paying the fee for Bering Sea pollock landed under the AFA Program. Cost recovery requirements for the AFA sectors are at 50 CFR 679.66.

NMFS calculates the standard price for pollock using the most recent annual value information reported to the Alaska Department of Fish & Game for the Commercial Operator's Annual Report and compiled in the Alaska Commercial Fisheries Entry Commission Gross Earnings data. Due to the time required to compile the data, there is a one year delay between the gross earnings data year and the fishing year to which it is applied. For example, NMFS used 2020 gross earnings data to calculate the standard price for 2021 pollock landings.

Under the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2021 calendar year is 0.25 percent for the AFA inshore sector. To calculate the 2021 fee liabilities, NMFS applied the respective fee percentages to the landings of Bering Sea pollock debited from each cooperative's fishery allocation that occurred between January 1 and December 31. The 2021 fee payments must be submitted to NMFS on or before December 31, 2021. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.66(a)(4)(iv).

AIP Program Standard Price and Fee Percentage

The AIP Program allocates the Aleutian Islands directed pollock fishery TAC to the Aleut Corporation, consistent with the Consolidated Appropriations Act of 2004 (Pub. L. 108–109), and implementing regulations. Annually, prior to the start of the pollock season, the Aleut Corporation provides NMFS with the identity of its designated representative for harvesting the Aleutian Islands directed pollock fishery TAC. The same individual is responsible for the submission of all cost recovery fees for pollock landed under the AIP Program. Cost recovery requirements for the AIP Program are at 50 CFR 679.67.

NMFS calculates the standard price for pollock using the most recent annual value information reported to the Alaska Department of Fish & Game for the Commercial Operator's Annual Report and compiled in the Alaska Commercial Fisheries Entry Commission Gross Earnings data for Aleutian Islands pollock. As explained above, due to the time required to compile the data, there is a one-year delay between the gross earnings data year and the fishing year to which it is applied.

For the 2021 fishing year, the Aleut Corporation did not select any

participants to harvest or process the Aleutian Islands directed pollock fishery TAC, and most of that TAC was reallocated to the Bering Sea directed pollock fishery TAC. Since there was no fishery for the AIP Program in 2021, the fee percentage is zero.

CDQ Standard Price and Fee Percentage

The CDQ Program was implemented in 1992 to provide access to BSAI fishery resources to villages located in Western Alaska. Section 305(i) of the Magnuson-Stevens Act identifies 65 villages eligible to participate in the CDQ Program and the six CDQ groups to represent these villages. CDQ groups receive exclusive harvesting privileges of the TACs for a broad range of crab species, groundfish species, and halibut. NMFS implemented a CDQ cost recovery program for the BSAI crab fisheries in 2005 (70 FR 10174, March 2, 2005) and published the cost recovery fee percentage for the 2020/2021 crab fishing year on July 7, 2021 (86 FR 35756). This notice provides the cost recovery fee percentage for the CDQ Program. Each CDQ group is subject to cost recovery fee requirements and the designated representative of each CDQ group is responsible for submitting payment for their CDQ group. Cost recovery requirements for the CDQ Program are at 50 CFR 679.33.

For most CDQ groundfish species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each fishery species. The volume and value information is obtained from the First Wholesale Volume and Value Report and the Pacific Cod Ex-Vessel Volume and Value Report. For CDQ halibut and fixed-gear sablefish, NMFS calculates the standard prices using information from the Individual Fishing Quota (IFQ) Ex-Vessel Volume and Value Report, which collects information on both IFQ and CDQ volume and value.

Using the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2021 calendar year is 0.83 percent for the CDQ Program. For 2021, NMFS applied the calculated CDQ fee percentage to all CDQ groundfish and halibut landings made between January 1 and December 31 to calculate the CDQ fee liability for each CDQ group. The 2021 fee payments must be submitted to NMFS on or before December 31, 2021. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.33(a)(3)(iv).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 23, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–25972 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Stellwagen Bank National Marine Sanctuary Draft Management Plan and Draft Environmental Assessment

AGENCY: Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability and public meetings for draft management plan and environmental assessment; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has prepared a draft management plan as part of the Stellwagen Bank National Marine Sanctuary (SBNMS or sanctuary) management plan review pursuant to the National Marine Sanctuaries Act. The draft management plan, which would update the 2010 sanctuary management plan, addresses current and emerging threats in SBNMS and reflects changes in new science and technologies, how people use the sanctuary, and community needs. The draft management plan supports continued protection of sanctuary resources through enforcement of existing sanctuary regulations, education and outreach strategies that promote ocean stewardship, and community engagement. Consistent with the information provided in the 2020 Notice of Intent, NOAA is not proposing modifications to the sanctuary regulations at this time, but may consider regulatory changes in the future. NOAA also prepared an environmental assessment, which evaluates the environmental impacts of implementing the draft management plan and ongoing field activities. NOAA is soliciting public comments on the draft updated management plan and environmental assessment at this time.

DATES: Comments on the draft management plan and environmental assessment are due by January 21, 2022. NOAA will host virtual public meetings at the following dates and times:

- Tuesday January 11, 2022, 6 p.m. Eastern Time
- Wednesday January 12, 2022, 3 p.m. Eastern Time

ADDRESSES: You may submit comments on draft management plan and environmental assessment document by any of the following methods:

Federal eRulemaking Portal: Go to *https://www.regulations.gov* and enter ''NOAA–NOS–2020–0003'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Send any hard copy public comments by mail to: Stellwagen Bank NMS, 175 Edward Foster Road, Scituate, MA, 02066, Attn: Management Plan Revision.

Email: Send any comments by email to: *sbnmsmanagementplan@noaa.gov.*

Public Meetings: Provide oral comments during virtual public meetings, as described under **DATES**. Webinar registration details and additional information about how to participate in these public scoping meetings is available at *https://stellwagen.noaa.gov/management/2020-management-plan-review/.* The meeting is accessible to individuals with disabilities. If you would like to request reasonable accommodations to participate in a meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than ten working days prior to each meeting.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Alice Stratton, (781) 545–8026, *sbnmsmanagementplan@noaa.gov,* 175 Edward Foster Road, Scituate, MA 02066.

SUPPLEMENTARY INFORMATION:

I. Background on Stellwagen Bank National Marine Sanctuary

SBNMS is one of the most biologically diverse and productive zones in the Gulf of Maine, and extends from Cape Ann to Cape Cod, encompassing 842

square miles and ranging in depth from 65 to 600 feet. The underwater landscape of the sanctuary is a patchwork of banks, basins, and biological features. Within these landscapes are habitats including deep-sea corals, sandy bottom, and shipwrecks. These habitats support over 575 species of invertebrates, fish, seabirds, sea turtles, and marine mammals. This diversity of habitats and marine life is important to local and regional economies as it supports a variety of commercial, recreational, scientific, and educational activities. These activities bring income, jobs, and economic output to the 14 coastal communities adjacent to the sanctuary.

II. Management Plan Review

Section 304(e), 16 U.S.C 1434(e), requires periodic review of sanctuary management plans to ensure sanctuary-specific management techniques and strategies: (1) Effectively address changing environmental conditions and threats to sanctuary resources and qualities; and (2) fulfill the purposes and policies of the NMSA. NOAA began its review of the SBNMS management plan in 2020 to examine current issues and threats to sanctuary resources and evaluate the extent to which the 2010 management plan met the sanctuary's goals and objectives. The need for revisions to the 2010 management plan is based on the several emerging threats to marine resources within SBNMS. Prior to the development of this draft management plan, NOAA completed a condition report in 2020 that assessed the condition and trends of resources and activities in SBNMS and guided the development of this draft management plan. The condition report is available at *https://sanctuaries.noaa.gov/science/condition/sbnms/* and concluded that human activities and climate change are impacting habitat, living resources, and maritime heritage resources in the sanctuary in various ways.

NOAA conducted public scoping for the management plan review process from February 13, 2020 to April 10, 2020 and invited input from the public on the scope of revisions to the 2010 management plan (85 FR 8213). The scoping process yielded feedback that was largely aligned with the 2020 condition report findings. Comments focused on NOAA's need to monitor and address potential emerging issues such as climate change and changes to water quality, to continue and expand protections for sanctuary resources, and to maintain core sanctuary research. Scoping comments also called for enhanced education and outreach efforts and increased capacity to administer sanctuary programs. NOAA incorporated the issues identified during the public scoping process into this draft management plan.

III. Action Plans

This draft management plan contains 15 action plans which address priority issues for SBNMS. These action plans fall under four primary goals: ensure a thriving sanctuary, increase support for SBNMS, deepen our understanding of sanctuary resources, and ensure coordinated support for sanctuary infrastructure, staff, and field operations. Each action plan is summarized below (refer to the draft for complete text).

- *Marine Mammal Protection:* The sanctuary serves as the primary habitat for 22 species of marine mammals. The goal of this plan is to expand our understanding of the vulnerability of marine mammals to anthropogenic activity and develop and implement mitigation activities.
- *Seabird Research:* Coastal development, predation by humans and other animals, removal of prey through fisheries activity, and marine environment pollution threaten the many seabirds in the sanctuary. The goal of this plan is to understand the abundance, distribution, habitat use, bycatch, contaminant load, and foraging ecology of seabirds, and how SBNMS relates to the wider Gulf of Maine and Atlantic ecosystems.
- *Vessel Traffic:* SBNMS sits at the mouth of Massachusetts Bay, which experiences commercial vessel traffic traveling to and from the growing Port of Boston. Sanctuary staff work to mitigate the impacts of the large volume of vessel traffic through technology, reporting, and warnings. The goal of this plan is to monitor vessel traffic and mitigate negative effects on sanctuary resources.
- *Maritime Heritage and Cultural Landscapes:* The sanctuary serves as an underwater museum to maritime history with numerous shipwrecks on the seafloor. The sanctuary's efforts in maritime cultural landscapes help us understand the relationships between the people and the sea in the past and present through research and management. The goal of this plan is to understand the broader context of past and present uses of the sanctuary while assessing and protecting maritime heritage resources in the sanctuary.
- *Compatible Uses:* Evolving commercial and recreational uses of the sanctuary impact key elements of the sanctuary's landscape. The goal of this plan is to enhance transparency regarding how current and emerging activities are assessed for compatibility while managing sanctuary resources.
- *Climate Change:* The goal of this plan is to evaluate climate change impacts on sanctuary resources and incorporate changing conditions in management decisions. Various strategies and efforts for enhanced understanding of climate impacts and synergies will inform decisions on a wide range of sanctuary management, including resource protection, education, and operations.
- *Education and Outreach:* A variety of education and outreach programs, tools, and techniques are employed to bring sanctuary information and research to the widest audiences. The goal of this plan is to increase public awareness and understanding of the sanctuary and encourage responsible use and stewardship of its resources.
- *Interagency/Intergovernmental Coordination:* NOAA relies on partnerships with other Federal and State agencies as well as collaborations with non-profit, community, research/academic, and many others, for effective management. The goal of this plan is to promote improved management through coordinated partnering with local, State, regional, Tribal, and Federal partners.
- *Sanctuary Advisory Council:* The Sanctuary Advisory Council addresses specific management issues and public involvement by developing sound advice for the sanctuary. The goal of this plan is to facilitate an active and engaged community of Sanctuary Advisory Council members to advise the superintendent in carrying out the sanctuary's mission.
- *Research and Monitoring:* The sanctuary conducts a robust science program to provide vital information to support management needs. The goal of this plan is to support, promote, and coordinate scientific research, characterization, and long-term monitoring to enhance the understanding of the sanctuary environment and processes, and improve management decision-making for optimal resource management and protection.
- *Soundscape:* The sanctuary has an extensive acoustics research program that provides opportunities for partnership and leadership in the development of regional, national, and international policies for managing noise impacts on marine life. The goal of this plan is to maintain the role of SBNMS as a sentinel site for passive acoustic monitoring in the Gulf of Maine, and as a testbed for applying these data to both long-term monitoring of ecosystems and the design of

methods to reduce impacts from human activities.

• *Water Quality Monitoring:* The exceptional diversity of marine life in the sanctuary depends on good water quality. This action plan addresses the need to collaborate on water quality monitoring and research in the sanctuary to determine whether it can continue to maintain healthy resources.

• *Habitat:* Habitat quality in the sanctuary over the last decade has shown changes from both direct interactions, like bottom-contact fishing, and indirect interactions, such as trophic and competitive shifts in population. The goal of this plan is to develop an improved understanding of the condition of major habitat types within the sanctuary to understand their productivity and biodiversity.

• *Ecosystem Services:* Sanctuary resources support nearby coastal communities in a variety of ways, and it is important to better understand and quantify the economic and intrinsic values of the sanctuary to natural and human systems. The goal of this plan is to explore the dynamic connections between sanctuary resources and ecosystem services to better inform management decisions.

• *Administration and Infrastructure Capacity:* This action plan addresses the necessary operational and administrative activities required for implementing an effective program, including staffing, infrastructure needs, and operational improvements.

IV. National Environmental Policy Act Compliance

As required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), NOAA has prepared an environmental assessment to evaluate the potential impacts on the human environment of implementing NOAA's proposed action. The proposed action is to update NOAA's management activities conducted within SBNMS that relate to research, monitoring, education, outreach, community engagement, and resource protection. The proposed management activities include revising the sanctuary management plan and implementing routine field activities and existing sanctuary regulations. No significant impacts to resources and the human environment are expected to result from this proposed action. Accordingly, under NEPA, an environmental assessment is the appropriate document to analyze the potential impacts of this action. Following the close of the public comment period and the satisfaction of consultation requirements under any applicable natural and cultural resource statutes, NOAA will finalize its NEPA analysis and prepare a final NEPA document and decision document.

V. Public Input Opportunity

With this notice, NOAA is seeking public comment and input from individuals, organizations, and Federal agencies, State, Tribal, and local governments on the draft management plan and environmental assessment, which is available at *https://stellwagen.noaa.gov/management/2020-management-plan-review/.* Printed copies may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Authority: 16 U.S.C. 1431 *et seq.;* 42 U.S.C. 4321 *et seq.;* 40 CFR 1500–1508 (NEPA Implementing Regulations); Companion Manual for NOAA Administrative Order 216–6A.

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–25819 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Privacy, Equity, and Civil Rights Listening Sessions

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene three virtual Listening Sessions about issues and potential solutions at the intersection of privacy, equity, and civil rights. The sessions will help to provide the data for a report on the ways in which commercial data flows of personal information can lead to disparate impact and outcomes for marginalized or disadvantaged communities.

DATES: The meetings will be held on December 14, 15, and 16, 2021, from 1:00 p.m. to 3:30 p.m., Eastern Standard Time.

ADDRESSES: The meetings will be held virtually, with online slide share and dial-in information to be posted at *https://www.ntia.gov/.*

FOR FURTHER INFORMATION CONTACT: Travis Hall, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482–3522; email: *thall@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002; email: *press@ntia.gov.*

SUPPLEMENTARY INFORMATION:

Background and Authority: The National Telecommunications and Information Administration (NTIA) is the President's principal advisor on telecommunications and information policy issues.[1] In this role, NTIA studies and develops policy advice about the impact of technology and the internet on privacy. This includes examining the extent to which technology implementations, business models, and related data processing are adequately addressed by the U.S.'s current privacy protection framework.[2] Importantly, NTIA has long acknowledged that privacy is a matter of contextual data flow and use rather than simply being a question of publicity.[3] Increasingly,

[1] See 47 U.S.C. 902(b)(2)(D), (H).

[2] NTIA Blog, ''NTIA Releases Comments on a Proposed Approach to Protecting Consumer Privacy'' (Nov. 13, 2018), *https://www.ntia.doc.gov/press-release/2018/ntia-releases-comments-proposed-approach-protecting-consumer-privacy* (commenters generally emphasized the need for changes to the U.S. privacy framework); see also, GAO, Consumer Privacy: Changes to Legal Framework Needed To Address Gaps (June 2019), *https://www.gao.gov/products/gao-19-621t* (same); Congressional Research Service, Data Protection Law: An Overview (March 25, 2019), *https://fas.org/sgp/crs/misc/R45631.pdf* (''Recent high-profile data breaches and other concerns about how third parties protect the privacy of individuals in the digital age have raised national concerns over legal protections of Americans' electronic data.''); Thorin Klosowski, The State of Consumer Privacy Laws In The US (And Why It Matters), Wirecutter (Sept. 6, 2021), *https://www.nytimes.com/wirecutter/blog/state-of-privacy-laws-in-us/* (describing consumer privacy laws in the United States and providing legal experts' characterizations of their inadequacy); Press Release, ''Wicker, Blackburn Introduce Federal Privacy Legislation'' (July 28, 2021), *https://www.commerce.senate.gov/2021/7/wicker-blackburn-introduce-federal-data-privacy-legislation* (''the need for federal privacy legislation is imperative''); Business Roundtable Letter to Senate Commerce Committee Urging Passage of a Federal Consumer Data Privacy Law (Oct. 4, 2021), *https://www.businessroundtable.org/business-roundtable-letter-to-senate-commerce-committee-urging-passage-of-a-federal-consumer-data-privacy-law.*

[3] *See* Internet Policy Task Force, *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy* 18 (Dec. 16, 2010), *https://www.ntia.doc.gov/files/ntia/publications/iptf_privacy_greenpaper_12162010.pdf;* White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy,* (Feb. 23, 2012), 16; *see also:* Helen Nissenbaum, *Privacy in Context,* (Nov. 2009). NTIA considers problematic uses and problematic collection to both fall under the umbrella of a ''privacy harm,'' an idea that is well-established in the literature. (*https://papers.ssrn.com/sol3/*

Continued

scholarship has shown that marginalized or underserved communities are especially in need of robust privacy protections.[4] These studies have shown that not only are these communities often materially disadvantaged with regards to the marginal effort required to adequately manage privacy controls, they are often at increased risk of suffering harm from losses of privacy or misuse of collected data.

The Administration has highlighted that there is a national imperative to promote equity and increase support for communities and individuals that have been ''historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' [5] As stated in the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government: ''[e]ntrenched disparities in our laws and public policies, and in our public and private institutions, have often denied [. . .] equal opportunity to individuals and communities.'' [6] These entrenched disparities persist in the digital economy, and the collection, processing, sharing, and use of data can directly affect—both positively and negatively—structural inequities present in our society.

The following examples underscore how commercial collection and use of personal information, even for legitimate purposes, often results in disparate outcomes for marginalized and underserved communities:

- Digital advertising systems have been shown to often reproduce historical patterns of discrimination by enabling discriminatory targeting by advertisers.[7] Even when targeting criteria does not include protected traits, targeted advertising can be used to perpetuate discrimination using proxy indicators of race, gender, disability, and other characteristics.[8]
- Data brokers, health insurance companies, and their subsidiaries are using information such as neighborhood safety, bankruptcies, gun ownership, inferred hobbies, and other information to determine coverage for people they deem more likely to require more expensive care.[9] These assessments can rely on unreliable and discriminatory heuristics or proxies for characteristics such as race, socioeconomic status, or disability—or as one salesman joked, ''God forbid you live on the wrong street these days,'' he said. ''You're going to get lumped in with a lot of bad things.''[10]
- Software implemented by a university to predict whether students will struggle academically used race as a strong predictor for poor performance.[11] Black students were flagged ''high risk'' for dropping out of certain subjects, such as science and math, at elevated rates, a designation that researchers warned could improperly lead to advisors encourage students to change to ''easier'' majors.[12]

In light of these and many more examples, it is critical for policymakers to understand how information policy can reduce data-driven discrimination and disparate treatment. In service of these objectives, NTIA announces through this Notice three virtual Listening Sessions, which aim to advance the policy conversation on how to alleviate the disproportionate privacy harms suffered by marginalized or underserved communities. NTIA's upcoming Listening Sessions are intended as an opportunity to build the factual record for further policy development in this area. The information gathered from these Listening Sessions will inform a subsequent Request for Comment, and together these efforts will provide the basis for NTIA to draft a report. Possible topics include, but are not limited to:

- The role and adequacy of current civil rights laws, related protections, and enforcement thereof in mitigating privacy harms against marginalized communities.
- The interplay between current civil rights laws and related protections with current privacy laws and proposed reforms.
- Data brokers and secondary markets for data.
- Exploitation of data or commercially available software for stalking or harassment based on protected class status.
- Workplace tracking and surveillance that may be discriminatory.
- Hiring, credit, lending, and housing algorithms and advertisements.
- Intersectional privacy needs of groups such as trans individuals, the unhoused, or people with disabilities.

The format of the Listening Sessions will include a mix of keynote speeches, moderated panel discussions, and open forums for members of the public to share their perspective. The first Listening session will be held on December 14, 2021, on the intersection of civil rights law and privacy. The second Listening session will be held on December 15, 2021, and will be on the

papers.cfm?abstract_id=3782222, 21–22 (''Privacy harms are highly contextual, with the harm depending upon how the data is used, what data is involved, and also how the data might be combined with other data'')).

[4] Danielle Keats-Citron, *Cyber Civil Rights,* 89 Boston U. L. Rev. 61 (2008); Khiara Bridges, *The Poverty of Privacy Rights,* Stanford University Press (2017); Mary Madden, Michele Gilman, Karen Levy & Alice Marwick, *Privacy, Poverty, and Big Data: A Matrix Of Vulnerabilities For Poor Americans,* 95 Wash. U. L. Rev. 53 (2017); Alvaro Bedoya, *Privacy As Civil Right,* 50 New Mexico L. Rev. 3 (2020); Scott Skinner-Thompson, *Privacy At The Margins,* Cambridge University Press (2020); Sara Sternberg Greene, *Stealing (Identity) From The Poor* (2021), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3781921;* Michele Gilman, *Feminism, Privacy, And Law In Cyberspace,* Oxford Handbook of Feminism and Law in the U.S. (2021 Forthcoming), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3779323.*

[5] Exec. Order No. 13,985, 86 FR 7009 (Jan. 20, 2021), *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.*

[6] *Id.*

[7] Muhammad Ali et al., *Discrimination Through Optimization: How Facebook's Ad Delivery Can Lead to Skewed Outcomes,* Computers and Society (April 19, 2019), *https://arxiv.org/abs/1904.02095.*

[8] *Id.*

[9] Marshall Allen, *Health Insurers Are Vacuuming Up Details About You—And It Could Raise Your Rates,* Pro Publica (July 17, 2018), *https://www.propublica.org/article/health-insurers-are-vacuuming-up-details-about-you-and-it-could-raise-your-rates;* Sarah Jeong, *Insurers Want To Know How Many Steps You Took Today,* The New York Times (April 10, 2019), *https://www.nytimes.com/2019/04/10/opinion/insurance-ai.html* (''But when it comes to insurance in particular, there are unanswered questions about the kind of biases that are acceptable. Discrimination based on genetics has already been deemed repugnant, even if it's perfectly rational. Poverty might be a rational indicator of risk, but should society allow companies to penalize the poor?'').

[10] Marshall Allen, *Health Insurers Are Vacuuming Up Details About You—And It Could Raise Your Rates,* Pro Publica (July 17, 2018), *https://www.propublica.org/article/health-insurers-are-vacuuming-up-details-about-you-and-it-could-raise-your-rates; see also,* Rachel Goodman, *Big Data Could Set Insurance Premiums. Minorities Could Pay the Price,* ACLU (July 19, 2018), *https://www.aclu.org/blog/racial-justice/race-and-economic-justice/big-data-could-set-insurance-premiums-minorities-could* (''Existing health disparities mean that data will consistently show members of certain groups to be more likely to need more health care. What will happen, then, if this data starts being used against those groups? We know, for example, that Black women are much more likely to experience serious complications from pregnancy than white women. So, health insurers might conclude that a woman who is Black and recently married is likely to cost them more money than a white woman in the same position''). Starre Vartan, *Racial Bias Found in a Major Health Care Risk Algorithm,* Scientific American (Oct. 24, 2019), *https://www.scientificamerican.com/article/racial-bias-found-in-a-major-health-care-risk-algorithm/* (''A study published Thursday in *Science* has found that a health care risk-prediction algorithm, a major example of tools used on more than 200 million people in the U.S., demonstrated racial bias—because it relied on a faulty metric [previous patients' health care spending as a proxy for medical needs].'').

[11] Todd Feathers, Major Universities Are Using Race as a ''High Impact Predictor'' of Student Success, The Markup (March 2, 2021), *https://themarkup.org/news/2021/03/02/major-universities-are-using-race-as-a-high-impact-predictor-of-student-success.*

[12] Feathers, *supra* note 8.

way in which the collection, use, and processing of personal and personally sensitive data affects structural inequities. The final Listening session will focus on solutions to the gaps and problems identified in the first two sessions, and will be held on December 16, 2021.

NTIA intends to publish a Notice and Request for Comments in the **Federal Register** that will be informed by the input received during the Listening Sessions. Members of the public unable to participate in the Listening Sessions are encouraged to respond to the forthcoming Request for Comments.

Time and Date: NTIA will convene three virtual Listening Sessions on December 14, 15, and 16, 2021, from 1:00 p.m. to 3:30 p.m., Eastern Standard Time. The exact time of the meeting is subject to change. Please refer to NTIA's website, *https://www.ntia.gov,* for the most current information.

Place: The meeting will be held virtually, with online slide share and dial-in information to be posted at *https://www.ntia.gov.* Please refer to NTIA's website, *https://www.ntia.gov,* for the most current information.

Other Information: The meeting is open to the public and the press on a first-come, first-served basis. The virtual meetings are accessible to people with disabilities. Individuals requiring accommodations such as real-time captioning, sign language interpretation or other ancillary aids should notify Travis Hall at (202) 482–3522 or *thall@ntia.gov* at least seven (7) business days prior to the meeting. Access details for the meeting are subject to change. Please refer to NTIA's website, *https://www.ntia.gov/,* for the most current information.

Dated: November 23, 2021.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2021–25999 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patents for Humanity Program

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

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0066 (Patents for Humanity Program). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before January 31, 2022.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0066 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Soma Saha, Patent Attorney, Office of Policy and International Affairs, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–9300; or by email to *patentsforhumanity@uspto.gov* with ''0651–0066 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

Since 2012, the United States Patent and Trademark Office (USPTO) has conducted the Patents for Humanity Program, an annual award program to incentivize the distribution of patented technologies or products for the purpose of addressing humanitarian needs. The program is open to any patent owners or patent licensees, including inventors who have not assigned their ownership rights to others, assignees, and exclusive or non-exclusive licenses. USPTO collects information from applicants that describe what actions they have taken with their patented technology to address the welfare of impoverished populations, or how they furthered research by others on technologies for humanitarian purposes. There are numerous categories of awards including: Medicine, Nutrition, Sanitation, Household Energy, and Living Standards. Sometimes the program includes additional categories specific for that year, for example COVID–19.

This information collection covers two application forms for the Patents for Humanity Program. The first application covers the humanitarian uses of technologies or products, and the second application covers humanitarian research. In both, applicants are required to describe how their technology or product satisfies the program criteria to address humanitarian issues. Additionally, applicants must provide non-public contact information in order for USPTO to notify them about their award status. Applicants may optionally provide contact information for the public to reach them with any inquiries. Applications must be submitted via email and will be posted on USPTO's website. Qualified judges from outside USPTO will review and score the applications. USPTO will then forward the top-scoring applications to reviewers from participating Federal agencies to recommend award recipients.

Winners are invited to participate in an awards ceremony at USPTO. Those applications that are chosen for an award will receive a certificate redeemable to accelerate select matters before USPTO. The certificates can be redeemed to accelerate one of the following matters: An *ex parte* reexamination proceeding, including one appeal to the Patent Trial and Appeal Board (PTAB) from that proceeding; a patent application, including one appeal to the PTAB from that application; or an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an *ex parte* reexamination, without accelerating the underlying matter which generated the appeal. This information collection also covers the information gathered in petitions to extend an acceleration certificate redemption beyond 12 months. Finally, winners are now able to transfer their certificates to third parties, including by sale, due to the January 2021 passage of the Patents for Humanity Program Improvement Act.

II. Method of Collection

Electronically through the *http://www.uspto.gov/patentsforhumanity* website.

III. Data

OMB Control Number: 0651–0066.
Form Numbers:

- PTO/PFH/001 (Patents for Humanity Competition: Humanitarian Use Application)
- PTO/PFH/002 (Patents for Humanity Competition: Research Use Application)
- PTO/SB/431 (Patents for Humanity Competiton: Petition to Extend Redemption)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households; state, local, and tribal governments, and Federal government.

Estimated Number of Respondents: 115 respondents per year.

Estimated Number of Responses: 115 responses per year.

Estimated Time per Response: USPTO estimates that it will take the public approximately 30 minutes to 4 hours to complete the items associated with this program. These estimated times include gathering the necessary information, preparing the application and any supplemental materials, and submitting the completed documents to USPTO.

Estimated Total Annual Respondent Burden Hours: 428 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $124,976.

TABLE 1—BURDEN HOUR/BURDEN COST TO RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	Humanitarian Program Application (Humanitarian Use) (PTO/PFH/001) (Private Sector Respondents).	50	1	50	4	200	$292	$58,400
1	Humanitarian Program Application (Humanitarian Use) (PTO/PFH/001) (Individuals or Households Respondents).	20	1	20	4	80	292	23,360
1	Humanitarian Program Application (Humanitarian Use) (PTO/PFH/001) (State, Local, and Tribal Governments Respondents).	10	1	10	4	40	292	11,680
1	Humanitarian Program Application (Humanitarian Use) (PTO/PFH/001) (Federal Government Respondents).	5	1	5	4	20	292	5,840
2	Humanitarian Program Application (Humanitarian Research) (PTO/PFH/002) (Private Sector Respondents).	5	1	5	4	20	292	5,840
2	Humanitarian Program Application (Humanitarian Research) (PTO/PFH/002) (Individuals or Households Respondents).	5	1	5	4	20	292	5,840
2	Humanitarian Program Application (Humanitarian Research) (PTO/PFH/002) (State, Local, and Tribal Governments Respondents).	5	1	5	4	20	292	5,840
2	Humanitarian Program Application (Humanitarian Research) (PTO/PFH/002) (Federal Government Respondents).	5	1	5	4	20	292	5,840
3	Petition to Extend the Redemption Period of the Humanitarian Awards Certificate (PTO/SB/431) (Private Sector Respondents).	2	1	2	1	2	292	584
3	Petition to Extend the Redemption Period of the Humanitarian Awards Certificate (PTO/SB/431) (Individuals or Households Respondents).	2	1	2	1	2	292	584
3	Petition to Extend the Redemption Period of the Humanitarian Awards Certificate (PTO/SB/431) (State, Local, and Tribal Governments Respondents).	1	1	1	1	1	292	292
3	Petition to Extend the Redemption Period of the Humanitarian Awards Certificate (PTO/SB/431) (Federal Government Respondents).	1	1	1	1	1	292	292
4	Transfer of Awards Certificate (Private Sector Respondents).	2	1	2	*0.5	1	292	292

TABLE 1—BURDEN HOUR/BURDEN COST TO RESPONDENTS—Continued

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
4	Transfer of Awards Certificate (Individuals or Households Respondents).	2	1	2	*0.5	1	292	292
	Total	115	.....	115	.....	428	.....	124,976

[1] The USPTO uses the combined rates for intellectual property attorneys and paralegas which is $292. 2021 (Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); *https://www.aipla.org/detail/news/2021/09/22/the-2021-report-of-the-economic-survey-is-here,* pg. F–27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is $435 per hour. 2020 Utilization and Compensation Survey by the National Association of Legal Assistants (NALA); *https://nala.org/paralegal-info/,* pg 10. The USPTO uses the average billing rate per hour which is $149.).

*30 minutes.

Estimated Total Annual Respondent (Non-hourly) Cost Burden: $0. There are no capital startup costs, filing fees, recordkeeping costs, maintance costs, or postage costs associated with this information collection.

Respondent's Obligation: Voluntary.

Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the 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 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.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, telephone number, email address, or other personal identifying information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2021–25995 Filed 11–29–21; 8:45 am]

BILLING CODE 3510–16–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: National Mail Voter Registration Form

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the EAC announces an information collection and seeks public comment on the provisions thereof. The EAC intends to submit this proposed information collection (National Mail Voter Registration Form) to the Director of the Office of Management and Budget for approval. Section 9(a) of the National Voter Registration Act of 1993 (''NVRA'') and Section 802 of the Help America Vote Act of 2002 (''HAVA'') requires the responsible agency to maintain a national mail voter registration form for U.S. citizens that want to register to vote, to update registration information due to a change of name, make a change of address or to register with a political party by returning the form to their state election office.

DATES: Comments must be received no later than 5 p.m. Eastern Standard Time on December 31, 2021.

ADDRESSES: Comments on the proposed information collection should be submitted electronically via *https://www.regulations.gov* (docket ID: EAC–2021–0003) or by email at *research@eac.gov.* Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: NVRA.

FOR FURTHER INFORMATION CONTACT: Dr. Nichelle Williams at 301–563–3919, or email *research@eac.gov;* U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

SUPPLEMENTARY INFORMATION:

Comments: Public comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Obtaining a Copy of the National Mail Voter Registration Form: To obtain a free copy of the registration form: (1) Download a copy at *https://www.eac.gov/voters/national-mail-voter-registration-form;* or (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: National Mail Voter Registration Form.

Title and OMB Number: National Voter Registration Act (NVRA) Regulations for Voter Registration Application; OMB Number 3265–0015.

Needs and Uses

Persons wishing to register to vote may use the National Mail Voter Registration form (''Federal form'' or ''form'') to apply for voter registration. After completing the form, an applicant

submits her/his form to their respective state election office for processing. States covered by the NVRA process the information from the form to register an applicant to vote. Neither EAC nor any other Federal agency processes or collects any information from the Federal form that a registration applicant submits to a state. Rather, EAC prescribes the Federal form, and states collect and record the information applicants submit. The Federal form is composed of the registration application, instructions for completing the application (General Instructions and Application Instructions), and state-specific instructions that identify each state's particular requirements. A copy of the current form in English and 17 additional translated languages is available on EAC's website, at *https://www.eac.gov/voters/national-mail-voter-registration-form.*

Affected Public (Respondents): U.S. citizens eligible to vote in jurisdictions that accept and use the National Mail Voter Registration form.

Number of Respondents: 2,500,000.

Responses per Respondent: 1.

Estimated Burden per Response: 0.12 hours per response.

Estimated Total Annual Burden Hours: 291,667 hours annualized.

Frequency: Annually.

Nichelle Williams,

Director of Research, U.S. Election Assistance Commission.

[FR Doc. 2021–26012 Filed 11–29–21; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

National Petroleum Council

AGENCY: Office of Fossil Energy. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**. Due to the COVID–19 pandemic, this meeting will be entirely virtual.

DATES: Thursday, December 14, 2021; 9:00 a.m. to 11:30 a.m. (EST).

ADDRESSES: Virtual meeting. Information to access a live stream of the meeting proceedings will be available at *www.energy.gov/fecm/national-petroleum-council-npc.*

FOR FURTHER INFORMATION CONTACT: Nancy Johnson, U.S. Department of Energy, Office of Fossil Energy and Carbon Management, Office of Resource Sustainability (FECM–30), 1000 Independence Avenue SW, Washington, DC 20585; email: *nancy.johnson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* To provide advice and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and the oil and natural gas industries.

Tentative Agenda:

- Call to Order, Introductory Remarks, and Welcome to *WebEx* Participants.
- DOE Remarks and Priorities.
- Administrative Matters.
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
- Adjournment.

Public Participation: The meeting is open to the public. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who would like to make oral statements pertaining to agenda items should contact Nancy Johnson at the postal address or email address listed above. Approximately 15 minutes will be reserved for public comments. The time allocated per speaker will depend on the number of requests received but will not exceed five minutes. Requests for oral statements must be received at least seven days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to *nancy.johnson@hq.doe.gov.*

Minutes: The minutes of the meeting will be available at *www.energy.gov/fecm/national-petroleum-council-npc* or by contacting Ms. Johnson. She may be reached at the above postal address or email address.

Signed in Washington, DC, on November 24, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–26052 Filed 11–29–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–464–000]

Indra Power Business MD 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 Indra Power Business MD 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 December 13, 2021.

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*) 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.

Dated: November 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26045 Filed 11–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–456–000]

Indra Power Business MA 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 Indra Power Business MA 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 December 13, 2021.

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*) 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.

Dated: November 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26043 Filed 11–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: PR22–6–000.

Applicants: EasTrans, LLC.

Description: Submits tariff filing per 284.123(b), (e)/: EasTrans SOC Version 5.1.0 to be effective 11/1/2021 Revising PR21–41–000 under PR22–6.

Filed Date: 11/22/2021.

Accession Number: 20211122–5086.

Comments/Protests Due: 5 p.m. ET 12/13/21.

Docket Numbers: RP11–1591–000.

Applicants: Golden Pass Pipeline LLC.

Description: Refund Report: 2021 Penalty and Revenue Costs Report of Golden Pass Pipeline LLC to be effective N/A.

Filed Date: 11/22/21.

Accession Number: 20211122–5181.

Comment Date: 5 p.m. ET 12/6/21.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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.

Dated: November 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26039 Filed 11–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2322–069; 2322–071; 2325–100; Project No. 2574–092; Project No. 2611–091]

Brookfield White Pine Hydro, LLC; Merimil Limited Partnership; Hydro-Kennebec, LLC; Notice of Intent To Prepare an Environmental Impact Statement for The Proposed Project Relicense, Interim Species Protection Plan, and Final Species Protection Plan, Request for Comments on Environmental Issues, Schedule for Environmental Review, and Soliciting Scoping Comments

On January 31, 2020, Brookfield White Pine Hydro, LLC filed an application for a new license to continue to operate and maintain the 8.65-megawatt (MW) Shawmut Hydroelectric Project No. 2322 (Shawmut Project).

On June 1, 2021, in a separate compliance proceeding for the Shawmut Project, Brookfield White Pine Hydro, LLC filed an Interim Species Protection Plan (Interim Plan) for Atlantic salmon and requested Commission approval to amend the current Shawmut license to incorporate the Interim Plan. The Interim Plan includes measures to protect endangered Atlantic salmon until the Commission issues a decision on the relicense application for the Shawmut Project.

Also on June 1, 2021, Brookfield Power US Asset Management, LLC (Brookfield), on behalf of the affiliated licensees for the 6.915–MW Lockwood Hydroelectric Project No. 2574 (Lockwood Project), 15.433–MW Hydro-Kennebec Hydroelectric Project No. 2611 (Hydro-Kennebec Project), and 15.98–MW Weston Hydroelectric Project No. 2325 (Weston Project), filed a Final Species Protection Plan (Final

Plan) for Atlantic salmon, Atlantic sturgeon, and shortnose sturgeon and requested Commission approval to amend the three project licenses to incorporate the Final Plan. All four projects are located on the Kennebec River, in Kennebec and Somerset Counties, Maine.

On July 1, 2021, Commission staff issued a notice of availability of a draft environmental assessment (DEA) for relicensing the Shawmut Project. On July 26, 2021, Commission staff issued a notice of the amendment applications for the Final Plan. On August 19, 2021, Commission staff issued a notice of the amendment application for the Shawmut Project's Interim Plan.

Numerous comments were filed on the Shawmut Project DEA and the Interim and Final Plans. Many of the commenters state that the Commission's National Environmental Policy Act (NEPA) review of the Shawmut Project relicensing and the Interim and Final Plans should be done comprehensively through the preparation of an environmental impact statement (EIS).[1] Commenters state that an EIS is needed to fully evaluate the effects of the four projects on Atlantic salmon and other migratory fish in the Kennebec River.

In consideration of the comments received on the record for the projects, staff now intends to prepare a draft and final EIS to evaluate the effects of relicensing the Shawmut Project and amending the licenses of all four projects to incorporate the measures in the Interim and Final Plans. The EIS will tier off Commission staff's Shawmut Project DEA and its findings and conclusions.[2] Additional information about the Commission's NEPA process is described below in the *NEPA Process and the EIS* section of this notice.

By this notice, Commission staff requests public comments on the scope of issues to address in the EIS. Specifically, we request comments on potential alternatives and impacts, as well as identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. On November 20, 2015, Commission staff issued a Scoping Document 1 and initiated the NEPA scoping process for the Shawmut Project relicense in Docket 2322–069. A revised Scoping Document was issued on August 9, 2016. The EIS will address the concerns raised during the previous Shawmut Project scoping process and the comments filed on the Shawmut Project DEA, as well as comments received in response to this notice. Therefore, if you submitted comments to the Commission during the previous scoping process or in response to the Shawmut Project DEA, you do not need to file those comments again. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

The deadline for filing scoping comments is 30 days from the issuance date of this notice.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using *eComment* is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (Project Nos. 2322–069; P–2322–071; P–2325–100; P–2574–092; and P–2611–091) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called *eSubscription* which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for *eSubscription*.

Summary of Proposed Actions

The Lockwood Project is located at river mile (RM) 63 in Waterville, Maine and is the first dam on the mainstem of the Kennebec River. The Hydro-Kennebec Project is the next dam upriver from the Lockwood Project at RM 64, followed by the Shawmut Project at RM 69.5 and the Weston Project at RM 81.5. The four projects are located within the range of the Gulf of Maine Distinct Population Segment of Atlantic salmon, which is federally listed as endangered under the Endangered Species Act (ESA). The projects are also located within the designated critical habitat for Atlantic salmon. In addition, the Lockwood Project's tailwater area is located in designated critical habitat for the threatened Atlantic sturgeon, and within the known range of the endangered shortnose sturgeon.

Under the proposed relicensing action for the Shawmut Project, the licensee proposes numerous measures to enhance upstream and downstream passage of diadromous fish species at the project. The licensee also proposes to conduct monitoring studies to evaluate the effectiveness of the new passage measures at meeting performance standards for Atlantic salmon survival at the project.

Under the proposed Interim Plan for the Shawmut Project, the licensee proposes to continue to implement protection measures contained in an expired Interim Plan previously approved for the project, and terms and conditions contained in an expired Incidental Take Statement issued for the project. The licensee also proposes to implement additional supplemental measures for the protection of Atlantic salmon.

Under the proposed Final Plan for the Lockwood, Hydro-Kennebec, and Weston Projects, the licensees propose upstream and downstream fish passage measures, as well as monitoring and management measures, to avoid or minimize the potential adverse effects of

[1] On July 16, 2020, the Council on Environmental Quality issued a final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (Final Rule, 85 FR 43,304), which was effective as of September 14, 2020. Accordingly, this EIS will be prepared pursuant to the Final Rule.

[2] The DEA for the Shawmut Project is filed in Docket P–2322–069 and is available at the following link: *https://elibrary.ferc.gov/eLibrary/filedownload?fileid=020DE0B9-66E2-5005-8110-C31FAFC91712.*

continued operation of the projects on Atlantic salmon, Atlantic sturgeon, and shortnose sturgeon, and the designated critical habitat for Atlantic salmon and Atlantic sturgeon.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss environmental effects that could occur as a result of the proposed Shawmut Project relicensing, and amending the licenses for the Shawmut, Lockwood, Hydro-Kennebec, and Weston Projects to include the measures contained in the Interim and Final Plans for the protection of ESA-listed Atlantic salmon, Atlantic sturgeon, and shortnose sturgeon. The EIS will address environmental effects associated with these proposed actions under the following general resource areas:

- Geology and soils
- water quality
- aquatic resources
- terrestrial resources
- threatened and endangered species
- recreation
- land use
- aesthetic resources
- socioeconomics
- cultural resources
- air quality and noise
- developmental resources

Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the EIS.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. The draft and final EIS will be available in electronic format in the public record through eLibrary. If eSubscribed, you will receive email notification when environmental documents are issued.

Expected Environmental Impacts

Based on the previous pre-filing scoping process for the Shawmut Project, staff's analysis in the Shawmut Project DEA, Brookfield's proposed Interim and Final Plans and the comments received on the record for each of these proceedings, Commission staff has identified the following major environmental impacts of the proposed action that will be evaluated in the EIS: (1) Effects of construction of proposed fish passage facilities on water quality and aquatic habitat; (2) effects of operation of existing and proposed fish passage facilities on upstream and downstream migration of diadromous fish populations, including threatened and endangered species and critical habitat; and (3) effects of proposed fish passage facility construction on cultural resources at the projects.

Alternatives Under Consideration

As part of our review in the EIS, Commission staff will consider all reasonable alternatives, which include: Alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and meet the goals of the applicant.[3] Alternatives that do not meet these requirements will be summarized and dismissed from further consideration in the EIS. Staff will also consider the no-action alternative. With this notice, we ask commenters to identify potential alternatives for consideration.

Schedule for Environmental Review

This scoping notice identifies Commission staff's planned schedule for completion of the draft and final EIS for the proposals.

Issuance of Notice of Availability of the draft EIS—August 2022

Issuance of Notice of Availability of the final EIS—February 2023

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the projects' progress. After the final EIS is issued, the Commission will make a decision on the proposals.

Permits and Authorizations Required

The table below lists the permits and authorizations that are anticipated to be required for the proposed actions. We note that this list may not be all-inclusive and does not preclude any required permits or authorizations if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to these actions. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Permit	Agency
Clean Water Act Section 401 Water Quality Certification	Maine Department of Environmental Protection.
Endangered Species Act Section 7 Consultation	National Marine Fisheries Service.

Additional Information

Additional information about the project is available on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* P–2322, P–2325, P–2574, and P–2611). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

If you have further questions you may also contact Marybeth Gay at *Marybeth.gay@ferc.gov,* or 202–502–6125, or Matt Cutlip at *Matt.Cutlip@ferc.gov,* or 503–552–2762.

Dated: November 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26034 Filed 11–29–21; 8:45 am]

BILLING CODE 6717–01–P

[3] 40 CFR 1508.1(z)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM22–2–000]

Reactive Power Capability Compensation

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on reactive power

capability compensation and market design.

DATES: Initial Comments are due January 31, 2022, and Reply Comments are due February 28, 2022.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail comments via the U.S. Postal Service to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments or comments sent via any other carrier should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:
Noah Schlosser (Technical Information), Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8356, *Noah.Schlosser@ferc.gov*
Neil Yallabandi (Legal Information), Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8260, *Neil.Yallabandi@ferc.gov*

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry (NOI) to seek comments on reactive power capability compensation and market design.

2. In an order issued in 2002,[1] the Commission recommended that all resources that have actual cost data and support documentation use the method employed in *American Electric Power Service Corporation* to establish a rate for the provision of reactive power.[2] Since the issuance of *AEP,* the electric markets and the generation resource mix have undergone significant change. For example, in 1999, when *AEP* issued, the majority of reactive power filings were made by synchronous resources that were owned by public utilities subject to the Uniform System of Accounts (USofA) and who annually submitted a FERC Form No. 1.[3] Today, the majority of the filings by entities seeking to establish a rate for reactive power capability compensation received at the Commission are made by owners of non-synchronous resources that produce reactive power using different types of equipment than used by synchronous resources. In addition, most filing entities (both synchronous and non-synchronous) received waivers of the requirement to maintain their accounts under the USofA rules and to file FERC Form No. 1 when they were granted market-based rate (MBR) authority under Order No. 697.[4] These changes have contributed, at least in part, to many such filings being set for hearing and settlement judge procedures.

3. In light of these developments, we seek comment on various issues that have arisen regarding reactive power capability compensation and market design.

I. Background

A. Reactive Power and Regulation

4. Almost all bulk electric power is generated, transported, and consumed in alternating current (AC) networks. Elements of AC systems supply and consume two kinds of power: Real power and reactive power. Real power accomplishes useful work (*e.g.,* runs motors and lights lamps). Reactive power supports the voltages that must be controlled for system reliability. At times, resources must either supply or consume reactive power for the transmission system to maintain voltage levels required to reliably supply real power from generation to load. Inadequate reactive power supply lowers voltage; as voltage drops, current must increase to maintain the power supplied, causing the lines to consume more reactive power and the voltage to drop further, eventually leading to reliability problems such as loss of transmission system stability and voltage collapse.[5]

5. In the Commission's *pro forma* LGIA, the power factor design criteria specify that, for synchronous resources, the ''Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection.'' [6] For non-synchronous resources, the ''Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the high side of the generator substation.'' [7]

6. Not only is reactive power necessary to operate the transmission system reliably, but it can also substantially improve the efficiency with which real power is delivered to customers. Increasing reactive power production at certain locations (usually near a load center) can sometimes alleviate transmission constraints and allow cheaper real power to be delivered into a load pocket.[8]

7. The rules for procuring reactive power can affect whether adequate reactive power supply is available, as well as whether the supply is procured efficiently from the most reliable and lowest-cost resources. This is readily apparent in the large portions of the United States where the transmission system is operated by regional transmission organizations (RTO) and independent system operators (ISO); these operators do not own generation and transmission facilities for producing and consuming reactive power and therefore must procure reactive power from others. But procurement rules also affect other parts of the United States where vertically integrated utilities operate the transmission system because reactive power capability is also available from independent companies.[9] Therefore, it is necessary to ensure that system operators, whether they are independent or vertically integrated, have adequate reactive power supplies at a just and reasonable rate.

8. The modern history of compensation for reactive power begins with the Commission's Order No. 888, its Open Access Rule, issued in April 1996.[10] In that order, the Commission

[1] *WPS Westwood Generation, LLC,* 101 FERC ¶ 61,290, at P 14 (2002).

[2] *Am. Elec. Power Serv. Corp.,* Opinion No. 440, 88 FERC ¶ 61,141 (1999) (Opinion No. 440).

[3] The FERC Form No. 1 is a comprehensive financial and operating report submitted annually by Major electric utilities, licensees and others and used for electric accounting regulation, rate regulation, market oversight analysis, and planning audits. 18 CFR 141.1.

[4] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, 119 FERC ¶ 61,295, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 123 FERC ¶ 61,055, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, 125 FERC ¶ 61,326 (2008), *order on reh'g,* Order No. 697–C, 127 FERC ¶ 61,284 (2009), *order on reh'g,* Order No. 697–D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011).

[5] *Payment for Reactive Power,* Commission Staff Report, Docket No. AD14–7–000, at 4–6 (Apr. 22, 2014), *https://www.ferc.gov/sites/default/files/2020-05/04-11-14-reactive-power.pdf.*

[6] *See Pro Forma* LGIA, § 9.6.1.1.

[7] *Id.,* § 9.6.1.2.

[8] *Id.* at 7–8.

[9] *Id.* at 11–13.

[10] *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,705–06 and 31,716–17 (1996) (cross-referenced at 75 FERC ¶ 61,080), Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC

concluded that ''reactive supply and voltage control from generation sources'' is one of six ancillary services that transmission providers must include in an open access transmission tariff.[11] The Commission noted that there are two approaches for supplying reactive power to control voltage: (1) Installing facilities as part of the transmission system and (2) using generation resources. The Commission concluded that the costs associated with the first approach would be recovered as part of the cost of basic transmission service and, thus, would not be a separate ancillary service. The second (using generation resources) would be considered a separate ancillary service and must be unbundled from basic transmission service. The Commission stated that, in the absence of proof that the generation seller lacks market power in providing reactive power, rates for this ancillary service should be cost-based and established as price caps, from which transmission providers may offer a discount.

9. In Opinion No. 440,[12] the Commission approved a method presented by American Electric Power Service Corp. (AEP), a vertically integrated utility, for allocating the costs of generator equipment between real power capability and reactive power capability, as well as the related operations and maintenance costs. AEP identified four components of a generation plant related to the production of reactive power: (1) The generator and its exciter, (2) the generator step-up transformer, (3) accessory electric equipment that supports the operation of the generator-exciter, and (4) the remaining total production investment required to provide real power and operate the exciter. Because these plant items produce both real and reactive power, AEP developed an allocation factor to sort the annual revenue requirements of these components between real and reactive power production. The factor for allocating to reactive power, developed by AEP, is $MVAR^2/MVA^2$, where MVAR is megavolt amperes reactive capability and MVA is megavolt amperes capability at a power factor of 1. Subsequently, the Commission indicated that all resources that have actual cost data and support should use AEP's methodology in seeking to recover reactive power capability costs pursuant to individual cost-based revenue requirements (hereinafter, the AEP Methodology).[13]

10. In Order No. 2003,[14] the Commission adopted standard large generator interconnection procedures and a standard agreement for the interconnection of large generation facilities (the *pro forma* Large Generator Interconnection Agreement (LGIA)), which included the requirement that interconnection customers maintain a power factor range of 0.95 leading to 0.95 lagging, unless the transmission provider has established a different power factor range.[15] Order No. 2003 required payment for reactive power to an interconnection customer only when the transmission provider requests the interconnection customer to operate its generating facility outside the established power factor range.[16] With respect to reactive power within the established power factor range, the Commission initially concluded that an interconnection customer ''should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation.'' [17] In Order No. 2003–A, however, the Commission clarified that ''if the Transmission Provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the Interconnection Customer.'' [18] Subsequently, in Order No. 2003–C, the Commission disagreed with commenters that reactive power capability compensation would result in a windfall to generators, explaining that reactive power is an important service.[19] Order No. 2003–A also exempted wind generators from maintaining the established power factor range.[20]

11. Order No. 661 established technical requirements for interconnecting large wind resources and maintained the exemption from providing reactive power, except where the transmission provider showed, through a system impact study, that reactive power capability was required to ensure safety or reliability.[21] In Order No. 2006,[22] the Commission adopted identical power factor and compensation requirements for small generating facilities (facilities having a capacity of no more than 20 MW) but exempted small wind generators from the reactive power requirement. In Order No. 827,[23] the Commission eliminated the exemptions for wind resources from the requirement to provide reactive power. As a result, all newly interconnecting non-synchronous generators were required to provide reactive power within the range of 0.95 leading to 0.95 lagging at the high-side of the generator substation as a condition of interconnection. Order No. 827 also clarified that the amount of reactive power required from non-synchronous resources should be proportionate to the actual (real) power output.[24] With respect to compensation, the Commission concluded that it did not have a sufficient record for determining a new methodology for non-synchronous generation reactive power compensation and stated that any non-synchronous resource seeking reactive power compensation would need to propose a method for calculating that compensation as part of its filing.[25]

B. Approaches to Reactive Power Capability Compensation

12. In RTOs/ISOs where transmission providers compensate for reactive power capability, the compensation is either (1) based on individual reactive power revenue requirements determined in cases for individual resources (or fleets [26] of resources) established pursuant to a cost-based methodology (*e.g.,* the AEP

¶ 61,220), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[11] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,705. The *pro forma* open access transmission tariff (OATT) includes six schedules that set forth the details pertaining to each ancillary service. The details concerning reactive power are included in Schedule 2 of the *pro forma* OATT. *Id.* at 31,960.

[12] *AEP,* Opinion No. 440, 88 FERC ¶ 61,141.

[13] *WPS Westwood Generation, LLC,* 101 FERC ¶ 61,290 at P 14; *FPL Energy Marcus Hook, L.P.,* 110 FERC ¶ 61,087, at P 16, *order on reh'g,* 111 FERC ¶ 61,168 (2005).

[14] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g,* Order No. 2003–A, 106 FERC ¶ 61,220, *order on reh'g,* Order No. 2003–B, 109 FERC ¶ 61,287 (2004), *order on reh'g,* Order No. 2003–C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007).

[15] *Id.* P 542.

[16] *Id.* P 546.

[17] *Id.*

[18] Order No. 2003–A, 106 FERC ¶ 61,220 at P 416.

[19] Order No. 2003–C, 111 FERC ¶ 61,401 at P 42.

[20] Order No. 2003–A, 106 FERC ¶ 61,220 at P 34.

[21] *Interconnection for Wind Energy,* Order No. 661, 111 FERC ¶ 61,353, *order on reh'g,* Order No. 661–A, 113 FERC ¶ 61,254 (2005).

[22] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, 111 FERC ¶ 61,220, *order on reh'g,* Order No. 2006–A, 113 FERC ¶ 61,195 (2005), *order granting clarification,* Order No. 2006–B, 116 FERC ¶ 61,046 (2006).

[23] *Reactive Power Requirements for Non-Synchronous Generation,* Order No. 827, 155 FERC ¶ 61,277, *order on clarification and reh'g,* 157 FERC ¶ 61,003 (2016).

[24] *Id.* P 49.

[25] *Id.* PP 47, 52.

[26] Fleet-based rate schedules consist of a single rate for multiple resources, sometimes developed over an extended period of time, which do not specify which resources are being compensated under the rate schedule.

Methodology) using the resource's MVAR capability or (2) paid on a flat per-MVAR region-wide basis based on testing for the maximum MVAR capability of the resource. Resources in PJM Interconnection, Inc. (PJM) and Midcontinent Independent System Operator, Inc. (MISO) generally use the AEP Methodology to set reactive power compensation on an individual resource basis, whereas resources in ISO New England Inc. (ISO-NE) and New York Independent System Operator, Inc. (NYISO) are compensated for reactive power under a flat rate described further below. Outside of these RTOs/ISOs, when transmission providers pay for the capability to provide reactive power within the standard power factor range, resources generally propose to use the AEP Methodology to set reactive power compensation on an individual resource basis.[27]

13. PJM and MISO compensate each resource owner with an amount equal to the resource owner's monthly reactive power capability service revenue requirement for reactive power capability, as accepted by the Commission. Although PJM and MISO both conduct regular reactive power capability testing,[28] because they compensate based on the reactive power revenue requirements on file with the Commission, they do not link the tested capability to compensation, and neither PJM nor MISO is required to notify the Commission when a resource fails to achieve its nameplate MVAR capability when tested.

14. ISO-NE and NYISO compensate resources for reactive power capability using a flat rate representing dollars per MVAR-year,[29] which is multiplied by the resource's tested reactive power capability.[30]

15. In ISO-NE, reactive power compensation is established by adding: (a) A flat rate for capacity costs designed to compensate for fixed capital costs related to providing reactive power; (b) a variable rate for lost opportunity costs; (c) a variable rate for energy consumed to produce reactive power; and (d) a variable rate for costs for the resource to come online or to increase its output above its economic loading point.[31] ISO-NE periodically adjusts the base flat rates for inflation.

16. The NYISO flat rate is based on the average cost-of-service in NYISO for providing leading and lagging reactive power.[32] In NYISO, the annual payment to qualified reactive power suppliers equals the product of the compensation rate and the sum of the lagging and the absolute value of the leading MVAR capacity [33] of the resource, as evidenced by the resource's tested reactive power capability. NYISO adjusts the base flat rates annually for inflation. In NYISO, only the flat rate portion is paid.[34]

II. Discussion

17. Generation owners seeking compensation for reactive power capability in PJM, MISO, and non-RTO/ISO regions that compensate for reactive power capability based on the costs of individual resources or on a fleet-wide basis generally submit individual cost-of-service filings based on the AEP Methodology.[35] As explained above, the AEP Methodology was designed based on the physical attributes of synchronous resources owned by a public utility that utilized the USofA and annually submitted a FERC Form No. 1. Since the AEP Methodology was established in 1999, the electric industry has undergone significant changes, both in the generation resource mix and a general shift away from cost-of-service rates for generators selling into Commission-jurisdictional markets. Now, the majority of the reactive power filings submitted to the Commission are made by owners of non-synchronous resources that, relying on waivers granted by the Commission in conjunction with sellers obtaining MBR authority under Order No. 697, neither use the USofA nor file FERC Form No. 1. Because the AEP Methodology was designed based on the physical attributes of a synchronous resource and because of this lack of FERC Form No. 1 information for independent power producers (synchronous and non-synchronous alike), customers and the Commission have faced challenges in evaluating proposed reactive power rate schedules submitted pursuant to section 205 of the Federal Power Act (FPA), resulting in the majority of the filings being set for hearing and settlement procedures.

18. Furthermore, in PJM, several resources that have interconnected to the distribution system rather than the transmission system have still sought compensation from transmission operators for their reactive power capabilities.[36] Monitoring Analytics, LLC, the Independent Market Monitor

[27] In addition, California Independent System Operator Corporation (CAISO); Southwest Power Pool, Inc. (SPP); and some non-RTO/ISO transmission operators (*e.g.,* Bonneville Power Administration, Arizona Public Service Company, Southern Companies) do not pay for reactive power capability.

[28] Under Schedule 2 of MISO's tariff, MISO's technical requirements dictate that within the past five years the generation resource meets the testing requirements for voltage control capability required by the Regional Reliability Council where the generation resource is located. *See* MISO, FERC Electric Tariff, Sched. 2, § II.B.3 (38.0.0). In PJM, resource owners are required to test 20% of their resources that receive reactive power capability compensation for reactive power capability annually, totaling 100% of such facilities over a 66 month period. However, individual resources that (1) have nameplate ratings below 20 MVA, (2) form part of aggregate generating facilities with nameplate ratings below 75 MVA, or (3) are not directly connected to the Bulk Electric System are exempt from these testing requirements. *See* PJM Manual 14D (Generator Operational Requirements), attach. E § E.2.

[29] Both ISO-NE and NYISO proposed their respective reactive power capability compensation mechanisms pursuant to section 205 filings. *See ISO New England Inc.,* 122 FERC ¶ 61,056, at P 1 (2008) (settling, in part, for a new flat rate in $/kVAR-yr). Note that, although NYISO also has a fixed rate for reactive power capability compensation, NYISO proposed the approach pursuant to an FPA section 205 filing, with stakeholder support. *N.Y. Indep. Sys. Operator, Inc.,* Docket No. ER02–617–000 (Feb. 5, 2002) (delegated order accepting NYISO's amended Rate Schedule 2 of the Market Administration and Control Area Services Tariff).

[30] ISO-NE, Transmission, Markets and Services Tariff, Schedule 2—Reactive Supply and Voltage Control Service (10.0.0); NYISO, NYISO Market Administration and Control Area Services Tariff (MST), Section 15.2, Rate Schedule 2—Payments for Supplying Voltage Supply (11.0.0). ISO-NE and NYISO conduct reactive power capability testing at least once every five years and annually, respectively. *See* ISO-NE, Transmission, Markets and Services Tariff, Schedule 2, § IV.A.12(a); NYISO, NYISO MST, Section 15.2.2.1, Annual Payment for Voltage Support Service; NYISO, *Ancillary Services Manual,* § 3.6 (Oct. 2021).

[31] *See, e.g., Me. Pub. Utils. Comm'n* v. *ISO New England Inc.,* 126 FERC ¶ 61,090, at P 6 (2009).

[32] NYISO, Deficiency Letter Response, Docket No. ER15–1042–001, at 1 (filed Apr. 30, 2015). NYISO explained that the $2,592/MVAR flat rate was calculated ''by dividing the total VSS [Voltage Support Service] program compensation paid to qualified VSS Suppliers in 2012 by the total lagging and leading reactive power capability of all qualified VSS Suppliers in 2012.'' Voltage Support Service is the ability to produce or absorb reactive power and the ability to maintain a specific voltage level under both steady-state and post-contingency operating conditions subject to the limitations of the resource's stated reactive capability.

[33] Reactive power capability is measured in MVAR. A resource's lagging reactive power capability indicates its ability to produce reactive power, and its leading reactive power capability indicates its ability to consume reactive power.

[34] Like the AEP Methodology, these flat rates are intended to compensate resources for the costs of reactive power capability.

[35] *Am. Elec. Power Serv. Corp.,* 80 FERC ¶ 63,006, at 65,071 (1997), *aff'd in part, rev'd in part,* Opinion No. 440, 88 FERC ¶ 61,141 at 61,437 (establishing the AEP Methodology); *see also WPS Westwood Generation, L.L.C.,* 101 FERC ¶ 61,290 at P 14 (recommending that all resources seeking to recover reactive power capability costs pursuant to individual cost-based revenue requirements use the AEP Methodology); *Dynegy Midwest Generation, Inc.,* Opinion No. 498, 121 FERC ¶ 61,025, at P 71 (2007), *order on reh'g,* 125 FERC ¶ 61,280 (2008) (discussing the AEP Methodology and recovery of heating losses).

[36] *See, e.g., Ingenco Wholesale Power, LLC,* 173 FERC ¶ 61,247 (2020) (*Ingenco*); *Whitetail Solar 3, LLC,* 173 FERC ¶ 61,288 (2020); *Whitetail Solar 2, LLC,* 174 FERC ¶ 61,238 (2021); *Elk Hill Solar 2, LLC,* 175 FERC ¶ 61,188 (2021); *Mechanicsville Solar, LLC,* 176 FERC ¶ 61,076 (2021).

for PJM (PJM Market Monitor), has argued that these resources are not technically capable of providing reactive power capability service consistent with Schedule 2 of PJM's tariff. Furthermore, it is unclear whether all such distribution-connected resources are technically capable of providing their full reactive power capability to the transmission system such that they are properly compensated through the applicable transmission rate schedules.[37]

19. Due to the aforementioned differences in the generation resource mix and divergent reporting requirements between market-based and cost-based sellers since the time when the AEP Methodology was established, the Commission seeks to examine whether the current regime for reactive power capability compensation requires revisions to ensure that payments for reactive power capability accurately reflect the costs associated with reactive power capability.

A. Issues With AEP Methodology-Based Reactive Power Compensation

20. We wish to explore several potential issues with reactive power capability compensation based on the AEP Methodology. These include the failure to account for the degradation of a resource's reactive power capability over time, any difficulties associated with applying the AEP Methodology to non-synchronous resources, any difficulty in verifying the revenue requirements proposed by owners of resources that have been granted waiver of certain accounting and reporting requirements, and any potential overcompensation in PJM stemming from the reactive power offset used in the PJM capacity market.[38]

1. Degradation

21. Although the Commission has established that resources that seek reactive power capability compensation under the AEP Methodology are required to submit test reports of their reactive power capability that support the company's proposed level of reactive power capability for which the company is seeking a proposed reactive power revenue requirement,[39] the AEP Methodology does not account for the fact that a resource's reactive power capability may degrade. As a result, over time the reactive power revenue requirement originally established under the AEP Methodology may no longer reflect the actual reactive power capability of the associated resource(s). However, unless a resource voluntarily files to revise its Commission-accepted revenue requirement or is otherwise required to do so under an applicable tariff, it will receive the same revenue over the course of its life, regardless of whether it maintains the capability to produce its stated power factor at its full real power capacity, which it supported with test reports at the time of its filing before the Commission. Furthermore, it can be difficult for the Commission to determine if the test reports accurately reflect the reactive power capability of the resource, particularly when the data the resource submits may be incomplete.[40]

2. Accounting and Ratemaking Issues Related to Non-Synchronous Resources

22. A lack of accounting and ratemaking guidance for non-synchronous resources under the AEP Methodology has contributed to litigation over reactive power compensation.[41] As noted above, the AEP Methodology was originally developed to determine the cost-of-service for reactive power production equipment owned by cost-of-service-regulated sellers and intended solely for synchronous resources. When compared to synchronous resources, non-synchronous resources have different physical processes and electric plant that is utilized in reactive power production. For example, relevant components of producing and controlling reactive power for synchronous resources include generator-exciters, step-up transformers, and accessory electric equipment. In contrast, non-synchronous resources may be capable of producing reactive power using only inverters.[42] As a result, when non-synchronous resources propose reactive power revenue requirements based on the AEP Methodology, they generally propose to populate AEP Methodology cost categories with equipment different from those used by synchronous resources.

23. For example, although the original AEP Methodology did not contemplate inclusion of a collection system as equipment necessary for production of reactive power, applicants have claimed that the collection system is comparable to the isolated phase bus of a synchronous facility, which is considered part of accessory electric equipment costs for synchronous resources. The isolated phase bus of a synchronous resource carries current between a synchronous resource and its step-up transformer. An isolated phase bus may be several feet in length, whereas a collection system for a non-synchronous resource may exceed a mile in length. The typical collection system in a non-synchronous resource uses multiple distribution voltage lines in a radial configuration to connect the power from the wind turbines or solar panels back to a central point, and the long length of the collector system lines causes reactive power losses. In comparison, the enclosed conductors of an isolated phase bus are short in length, thus causing much smaller reactive power losses, and provide fault protection between the synchronous resource and the step-up transformer. Due to these differences, the collection system of a non-synchronous resource generally represents a significantly higher proportion of the resource's total investment cost than the isolated phase bus represents for synchronous resources. Thus, non-synchronous resources' interpretation of the AEP Methodology under this approach increases the annual revenue requirement for those resources on a relative basis as compared to the annual revenue requirements for synchronous resources. The Commission has yet to formally address any difference in cost structures across generation types for reactive power compensation under the AEP Methodology.

24. Furthermore, the Commission's USofA does not include accounts that clearly accommodate non-hydro non-synchronous resources and associated operation and maintenance expenses. The Commission recently issued a separate NOI seeking input on whether

[37] *See infra* Section II.C.

[38] *See infra* notes 40–41, 47.

[39] The Commission required all resources to submit test reports when seeking a reactive power revenue requirement in *Wabash Valley Power Ass'n, Inc.,* 154 FERC ¶ 61,245, at P 29 (2016); *Wabash Valley Power Ass'n, Inc.,* 154 FERC ¶ 61,246, at P 28 (2016) (together, *Wabash*). The Commission also reiterated ''that revenue requirements established pursuant to Schedule 2 of the *pro forma* Open Access Transmission Tariff . . . are based on a particular level of reactive power capability for a particular generating unit or group of units'' and ''should reflect'' the present circumstances of the unit. *See Wabash,* 154 FERC ¶ 61,245 at P 28; 154 FERC ¶ 61,246 at P 27.

[40] The test report data does not always support the revenue requirement, and a resource's test reports are one of the issues often set for hearing and settlement procedures. *See, e.g., Talen Energy Mktg., LLC,* 155 FERC ¶ 61,297, at P 9 (2016); *Dynegy Lee II, LLC,* 161 FERC ¶ 61,016, at P 16 (2017); *Buckeye Power, Inc.,* 162 FERC ¶ 61,145, at P 10 (2018); *Ingenco,* 173 FERC ¶ 61,247 at P 30.

[41] *See Locke Lord LLP,* 174 FERC ¶ 61,033 (2021).

[42] Typically, inverter-based resources will shut down without sufficient power supply; however, if configured to do so, some inverter-based resources can produce reactive power without real power. *E.g.,* North American Electric Reliability Corporation, *Reliability Guideline—BPS-Connected Inverter-Based Resource Performance* at 34 (Sept. 2018), *https://www.nerc.com/comm/PC_Reliability_Guidelines_DL/Inverter-Based_Resource_Performance_Guideline.pdf.*

to create new accounts to accommodate these resources, how to modify FERC Form No. 1 to reflect any new accounts, and the rate setting implications, including for reactive power, of these potential accounting and reporting changes.[43]

3. Evidentiary Support

25. The AEP Methodology originally contemplated the use of USofA accounting structures and the sworn and attested-to accounting entries in the FERC Form No. 1 to support the proposed reactive power rates. This reliance enables resources to develop a cost-of-service rate that is verifiable by Commission staff and parties. However, the vast majority of resource owners currently applying for reactive power compensation reflecting the AEP Methodology received waivers of the Commission's accounting and reporting requirements when they were granted MBR authority under Order No. 697, meaning they do not submit the FERC Form No. 1, nor are they required to track their costs consistent with USofA accounting.[44] Thus, when resources that have been granted these waivers propose revenue requirements using the AEP Methodology, it is difficult for the Commission and affected customers to easily verify that the proposed rates accurately reflect the AEP Methodology.

4. Market-Based Compensation and Potential Overcompensation in PJM

26. The PJM Market Monitor has argued for some time that the best approach to reactive power compensation in PJM is through the capacity market rather than compensation through a separate cost-of-service construct as currently provided for under Schedule 2 of the PJM Tariff.[45] The PJM Market Monitor contends that cost-of-service compensation for reactive power capability is an anachronistic approach that predates the introduction of wholesale power markets and is unnecessary in light of potential compensation through the PJM markets. The PJM Market Monitor states that generating resources are required to have reactive capability to receive interconnection service. The PJM Market Monitor argues that Schedule 2 should be eliminated from the PJM tariff and PJM should rely on the capacity markets to ensure resource adequacy, including the capability to provide real power and reactive power at the lowest possible cost. More specifically, under the PJM Market Monitor's approach, if PJM's Schedule 2 were eliminated entirely, the gross costs of the entire plant, including any costs associated with the production of reactive power, would be included in the gross Cost of New Entry (CONE) and the generic offset for reactive power capability service compensation[46] would no longer be used to calculate Net CONE.

27. The PJM Market Monitor alternatively argues that, if PJM retains Schedule 2, Schedule 2 should be revised to avoid the potential overpayment for reactive power capability.[47] The PJM Market Monitor explains that the E&AS Offset associated with the reference resource in the capacity market is assumed to recover $2,199/MW-year in reactive power payments. The PJM Market Monitor states that, as a result of the offset rules, reactive power capability rates of up to $2,199/MW-year, do not result in double recovery for reactive power capability. On the other hand, the PJM Market Monitor contends that any separate reactive power capability payments through Schedule 2 that exceed $2,199/MW-year result in overcompensation as such costs can and should be recovered through the capacity market. In short, the PJM Market Monitor contends that when the market design allows for the recovery of specific costs for reactive power capability, it is inappropriate to also include those costs in a separate cost-of-service rate.

5. Questions Regarding AEP Methodology-Based Compensation

28. Given the backdrop of the issues discussed herein, we wish to explore in this NOI, whether the AEP Methodology remains a just and reasonable approach to determining reactive power revenue requirements in all circumstances. We encourage comments regarding the topics broadly discussed above. The following questions are designed to identify potential modifications to the AEP Methodology and related market designs and reporting requirements necessary to ensure just and reasonable rates for reactive power capability compensation. Commenters need not answer every question enumerated below.

a. Does compensating resources based on their costs of investment in reactive power capability continue to be the appropriate basis for reactive power capability compensation? Why or why not?

i. If so, does the AEP Methodology accurately reflect a resource's investment costs? Why or why not? To the extent your answer depends on the type of resource, please be specific.

b. What is the appropriate time period for compensation from a rate developed under the AEP Methodology? Should payments be limited based on the useful lives of the plant at issue? Why or why not?

c. As noted earlier, the power factor design criteria in the Commission's *pro forma* LGIA specify that the Large Generating Facility should be designed to maintain a composite power delivery at *continuous* rated power output, either at the Point of Interconnection for synchronous resources or at the high side of the generator substation for non-synchronous resources. Given this, when a resource conducts testing to demonstrate its reactive power capability, over what minimum amount

[43] *See Accounting and Reporting Treatment of Certain Renewable Energy Assets,* 174 FERC ¶ 61,032, at P 3 (2021) (citations omitted) (''Recently, parties have expressed disagreement regarding which Other Production accounts should be used to book non-hydro renewable assets. In Docket No. AC20–103, the Commission received a request for confirmation that the costs of certain wind and solar generating equipment are properly booked to the Other Production Accounts 343 (Prime Movers), 344 (Generators), and 345 (Accessory Electric Equipment). In that proceeding, commenters argued that the proposal booked an inappropriate amount of costs to Account 345, which are included in reactive power rates pursuant to the AEP Methodology. Commenters, including the Edison Electric Institute, suggested that the Commission consider creating new accounts for wind, solar, and other non-hydro renewables to resolve this issue.'').

[44] Per Order No. 697, the Commission grants MBR sellers waiver of the accounting and reporting requirements in its approval of initial applications for MBR authority.

[45] *See, e.g.,* PJM Market Monitor, Comments, Docket No. AD16–17–000, at 1, 6–10 (filed Aug. 1, 2016) (detailing the PJM Market Monitor's view that reactive capability costs can—and should—be recovered through PJM's capacity market instead of under a cost-of-service paradigm); Monitoring Analytics, 2020 State of the Market Report for PJM at 523, *https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020.shtml* (describing the PJM Market Monitor's position and recommended improvements).

[46] The Energy and Ancillary Services Offset (E&AS Offset) is used to calculate Net CONE in the PJM capacity market and it includes a revenue offset of $2,199/MW-year to reflect the average annual reactive power revenue for combustion turbines from 2005 through 2007, based on the actual costs reported to the Commission in reactive power capability service filings of combustion turbines. The result of this offset is that, conceptually, the cost of reactive capability is not part of Net CONE.

[47] *See, e.g.,* PJM Market Monitor, Comments, Docket No. AD16–17–000, at 8, 10 (filed Aug. 1, 2016) (explaining that ''[i]f revenues for reactive capacity were removed from the Net Energy and Ancillary Services Revenue Offset, then the fixed costs for investment in reactive capability would be recoverable through the capacity market,'' obviating the need for separate cost-of-service reactive power rates); PJM Market Monitor, Brief on Exceptions, Docket No. ER17–1821–002, at 3–16 (filed June 12, 2019) (discussing the PJM Market Monitor's concerns about what it termed a ''hybrid of market-based rates and cost of service rates''); PJM Market Monitor, Rehearing Request, Docket No. ER17–1821–005, at 3–5 (filed Apr. 30, 2021) (addressing issues regarding the E&AS Offset and a generator's proposed reactive power rates).

of time should a resource be required to maintain its maximum real power output while operating across its claimed reactive power factor range? Please specify to which type(s) of resource your proposed minimum time period corresponds.

i. The Commission has found that, to the extent the resource has established that it is able to produce reactive power up to its nameplate capability, a resource may use up to its nameplate power factor in calculating its reactive power revenue requirements.[48] Is there any reason for the Commission to believe that the nameplate capability aspect of calculating reactive power revenue requirements should be revised in order to produce a more accurate result? Why or why not? If so, in what manner (for example, should the power factor range identified in the interconnection agreement be considered)?

d. Many resources have an interconnection agreement in which reactive power requirements are addressed; however, to the extent that reactive power capability requirements are not addressed in a resource's interconnection agreement and a resource seeks compensation for supplying reactive power capability, how should the Commission address this? For example, should the Commission require that the resource and its transmission provider propose updates or additions to the interconnection agreement to specify the resource's reactive power capability requirements as a condition of establishing or maintaining a reactive power revenue requirement or should other methods be used in this regard?

e. Reactive power filings set for hearing and settlement judge procedures often do not have active intervening parties other than the market monitor and RTO/ISO. Why do other parties not participate more in these proceedings?

a. Degradation

f. How does a resource's reactive power capability degrade over time? Does the degradation follow a predictable pattern over a certain period of time? Does this answer vary depending on the generation type, real power capacity, and/or other aspects of a particular resource? If so, how?

i. Should resources receiving reactive power capability compensation undergo periodic reactive power capability testing to demonstrate that their reactive power capability compensation remains accurate?

1. If so, how frequently should this testing be performed?

2. Should the frequency of testing be influenced by other factors, including the generation type, real power capacity, and/or other aspects of a particular resource?

3. Is there a period after a new resource begins operating during which testing is unnecessary? If so, what is the appropriate length of this period and why? Please clarify which type of resource(s) this period should apply to and why.

4. Should reactive power capability compensation in all cases be linked to tested capability? If not, why not? If so, how? And, if so, should test results be updated and how frequently?

g. Should the AEP Methodology be modified to account for reactive power capability degradation over the lifetime of the resource and, if so, how?

i. If the Commission makes such a modification, should the revised methodology only consider the resource's most recent reactive power capability testing results, or should the Commission incorporate degradation curves or other processes to estimate continued degradation between tests? If using degradation curves, should this methodology vary by resource type? If so, how? Should a resource have the opportunity to rebut the application of a degradation curve if it can demonstrate that its test results exceed the estimate derived from a degradation curve?

ii. Should the Commission adopt a standard minimum testing frequency for resources that receive reactive power capability compensation? If not, why not? If so, what time period should the minimum frequency be (*e.g.,* testing required annually, biannually, every five years, etc.)? Please indicate to which type(s) of resources your proposed minimum frequency corresponds.

h. Over what time period does the NERC MOD–25–2 Reliability Standard [49] accurately represent a resource's capability to provide reactive power?

i. For how long is this data valid? Please explain.

ii. If these standards do not accurately represent a resource's reactive power capability, what additional data should resources provide to verify their reactive power capability? Should this data vary by resource type? If so, how and why?

i. Are there maintenance activities needed to maintain reactive power capability that do not also contribute to real power capability?

i. If so, what percentage of a generating facility's operating and maintenance budget is necessary to maintain reactive power capability?

ii. Does this differ by type of generating resource? If so, how?

b. Non-Synchronous Resources

j. Is the existing AEP Methodology appropriate to allocate the costs associated with reactive power revenue requirements of non-synchronous resources? If not, why and can changes be made to the existing AEP Methodology to establish just and reasonable reactive power revenue requirements for non-synchronous resources? If so, please provide detailed descriptions of any potential changes and explain why they are necessary.

k. As discussed above,[50] the AEP Methodology determines a resource's cost of reactive power capability by applying an allocation factor to four groups of costs that are involved in the production or consumption of reactive power for a synchronous resource: (1) The generator and exciter, (2) the step-up transformer, (3) accessory electric equipment used to support the operation of the generator and exciter, and (4) the remaining production plant investment. For each of these groups of costs, assuming that the non-synchronous resource type can provide reactive power capability, please identify what non-synchronous resource equipment corresponds to the synchronous resource equipment used in the AEP Methodology and how that equipment is related to the production of reactive power. Please explain if that equipment is also related to the production of real power. Please specify if the equipment identified is specific to a type of non-synchronous resource (*e.g.,* wind, solar, battery).

i. In the alternative, please describe what groups of costs are involved in the production or consumption of reactive

[48] *See, e.g., Panda Stonewall LLC,* 174 FERC ¶ 61,266, at PP 99, 107–109 (2021) (finding that a reactive power supplier was entitled to use its nameplate power factor in calculating its reactive power revenue requirement, rather than being limited to the power factor specified in its interconnection agreement, since the facility was a new synchronous generator facility and degradation of its reactive power output was not an issue).

[49] The NERC MOD–25–2 standard refers to verification and data reporting of generator real and reactive power capability as well as synchronous condenser reactive power capability. Under this standard, each Generator Owner shall provide its Transmission Planner with verification of the Reactive Power capability of its applicable facilities within 90 calendar days of the date the data is recorded for a staged test or the date the data is selected for verification using historical operating data. Reliability Standard MOD–25–2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability), at Requirement R2.

[50] *See supra* Section I.

power for a non-synchronous resource and how a non-synchronous resource's equipment would be allocated to each of those groups. Please explain if these groups are involved in the production or consumption of power other than reactive power.

l. Which, if any, of the four groups under the AEP Methodology do costs associated with the collection system of a non-synchronous resource fall into and why?

i. If they do not fall into any of those groups, should those costs related to the collection system be recovered? Why?

ii. Is the collection system comparable to the isolated phase bus of a synchronous resource? Why or why not? In what ways are they similar and in what ways are they different? What other aspects of a non-synchronous resource does a collection system serve?

m. Please explain whether it is necessary for a Type 3 wind turbine,[51] Type 4 wind turbine,[52] or solar PV facility to produce real power at a particular time in order for the resource to provide reactive power capability at that time.

i. If so, what are the implications, if any, for the current proportionality requirement on reactive power from non-synchronous resources?

n. Should the AEP Methodology be altered to account for the intermittent availability of some non-synchronous resources? Why or why not?

o. Solar resources can be designed with power factors much lower than those of synchronous resources,[53] which implies a much higher reactive power capability and results in higher revenue requirements under current application of the AEP Methodology for solar generating facilities versus a comparable synchronous resource, all else being equal. Should the AEP Methodology be altered to account for this difference? Why or why not?

i. Refer to Section II.A.5, question l.i. Would allocating the costs of solar generating facilities into cost categories different from those categories defined under the AEP Methodology, and using a solar generating facility's power factor, result in a revenue requirement more or less comparable to that of a synchronous generating facility, all else being equal?

c. Evidentiary Support

p. What options are available to collect independently verifiable cost information from MBR sellers that have received waiver of the accounting and FERC Form No. 1 requirements to support their reactive power capability revenue requirements? For example, how should MBR sellers that receive reactive power capability compensation track their equipment costs and support their proposed reactive power revenue requirements?

q. In order to simplify and provide transparency to proposed reactive power capability compensation filings, should the Commission require, in PJM, MISO, and non-RTO/ISO regions that compensate for reactive power capability based on the costs of individual resources or on a fleet-wide basis, reactive power filers to include with their filing a standardized form with recognized schedules and officer and independent accountant certification requirements? Please explain why or why not.

i. Would the standardized form allow for better comparisons between reactive power rates and/or allow the reactive power rates to be more easily refreshed to reflect degradation or other changes to reactive power capability? If not, why not?

ii. Should the form contain similar information as the relevant USofA accounts used in the AEP Methodology? If not, why not? If yes, please specify the types of information that would be necessary to calculate a reactive power revenue requirement.

iii. If the Commission pursued a standardized form approach, what cost support should be included in a standardized form?

d. Potential Overcompensation in PJM

r. Refer to the PJM Market Monitor's concerns regarding the potential in PJM of overpayment for reactive power capability.[54] In PJM and other RTOs/ISOs with centralized capacity markets, how do resources typically account for revenues from reactive power compensation when calculating their capacity offers?

i. If a resource accounts for revenues from reactive power compensation when calculating its capacity offers, does that approach ensure that the resource does not receive double compensation for providing reactive power capability service? Please explain why or why not.

ii. Please explain how the lack of accounting for revenues from reactive power compensation when calculating resources' capacity offers does not constitute double compensation.

s. Do resources in PJM that receive reactive power capability compensation above $2,199/MW-year effectively receive double-recovery as alleged by the PJM Market Monitor?

i. If so, how should such overcompensation be corrected?

ii. If not, please explain why no double-recovery occurs.

B. Alternative Methodologies

29. As noted above, the AEP Methodology is currently used as the Commission's approach to developing revenue requirements for reactive power capability in PJM, MISO, and by transmission providers in non-RTO/ISO regions. The Commission, in this NOI, would like to explore whether other potential alternative methodologies not based on the costs of the particular resource(s) at issue in a given proceeding should be considered or better used to develop reactive power capability revenue requirements.

30. One possible alternative approach is a flat rate methodology, which would be based on the total reactive power payments made by transmission customers in a region divided by the MVARs consumed in the region. This ''dollars per MVAR-year'' value may be determined either for each class of resource (solar, wind turbine, combined-cycle, combustion turbine, and hydroelectric) or a single value could be paid to all classes of resources similar to the approach used in ISO–NE and NYISO. We seek comment on the potential benefits and drawbacks of using any flat rate methodology for reactive power capability compensation.

31. Another possible approach to reactive power capability compensation is replacement cost ratemaking. Under this approach, the lowest-cost technology capable of providing reactive power capability, such as a synchronous condenser, is used to establish a per-MVAR-year rate. Then, all resources would be paid the same amount based upon their tested MVAR capability. Replacement cost ratemaking derives from the Supreme Court's decision in *Smyth* v. *Ames,*[55] in which the Court indicated that appropriate rate base is

[51] Type 3 wind turbines have doubly-fed induction generators with rotor terminals connected to power converters. The stator terminals of Type 3 wind turbines are directly connected to the bulk electric system.

[52] Type 4 wind turbines use either synchronous or asynchronous generators with generator stator terminals connected to a power converter. The power converters of Type 4 wind turbines are directly connected to the bulk electric system.

[53] *See, e.g.,* Delta's Edge Solar, LLC, Exhibit DES–1, Docket No. ER21–1452–000, at 8 (filed Mar. 16, 2021); Crossett Solar Energy, LLC, Exhibit CSE–1, Docket No. ER21–1453–000, at 8 (filed Mar. 16, 2021).

[54] *See supra* Section II.A.4.

[55] 169 U.S. 466 (1898). The U.S. Supreme Court permitted the Commission to use original cost ratemaking in place of replacement or reproduction cost given the difficulty of determining fair value in most cases. *FPC* v. *Hope Nat. Gas Co.,* 320 U.S. 591 (1944).

based on the replacement cost or fair value of the rate base.[56] Such a replacement cost approach could also form a benchmark for evaluating the justness and reasonableness of proposed reactive power capability revenue requirements, where any proposed rates above the cost of the alternative technology would be considered unjust and unreasonable unless the record demonstrates that the resource's costs of investment in reactive power capability supports the proposed revenue requirement.

1. Questions Regarding Alternative Methodologies

32. We encourage comments regarding the topics discussed above in this section. The following questions are designed to explore further potential alternative methodologies. Commenters need not answer every question enumerated below.

a. Should alternative methodologies to the AEP Methodology be considered for the calculation of reactive power capability revenue requirements? If not, why not? If so, what alternative methodologies to the AEP Methodology could be used for calculating reactive power revenue requirements that would accurately capture the cost of providing reactive power capability? Please clarify if any methodology is specific to certain types of resources or not. For example, what methodology could appropriately account for the technical characteristics of non-synchronous resources that do not exist in synchronous resources? How would developing revenue requirements under such a new methodology compare to developing revenue requirements using the AEP Methodology?

b. Should a flat rate approach to reactive power compensation differ depending on the type of resource, or should one rate be used for all resource types?

c. Under a flat rate approach:

i. How should the rate be initially set, and how would it be adjusted over time (*e.g.,* for inflation)?

ii. Should payments to a specific resource be based on the resource's tested reactive power capability or its actual reactive power output?

iii. How often should the resource's reactive power capability be tested?

d. Under a replacement cost approach:

i. What alternative technology should be used to establish the rate and how should that alternative technology be determined?

ii. How often should the alternative technology used to establish the rate be reevaluated?

e. Would a change to a flat rate or replacement rate approach require resources to change any of their accounting, record keeping or any other administrative processes?

i. Would such a change have an impact on capital investment decisions? Are there any other effects that such a change would cause? If possible, please provide numbers to quantify statements.

f. In regions such as CAISO and SPP, where resources are not directly compensated for their reactive power capabilities, how do resources recover the costs of their investment in reactive power capability?

g. Refer to the PJM Market Monitor's proposal to provide for reactive power compensation in PJM through the capacity market rather than through a separate cost-of-service construct.[57] In regions with a centrally-cleared capacity market, would it be preferable for resources to recover the costs of their investment in reactive power capability by embedding those costs in their capacity market offers, rather than using a separate cost-based rate? Please describe any advantages or disadvantages to this approach and any modifications this would require in the applicable region's OATT and market rules.

C. Distribution-Connected Resources

33. The Commission has previously found that a transmission provider need not provide compensation to resources for reactive power if the resource is not under the control of the control area operator.[58] Schedule 2 of the *pro forma* OATT similarly requires that generation facilities and non-generation resources capable of providing reactive power be ''under the control of the control area operator.''

34. In several recent cases,[59] the PJM Market Monitor has challenged the eligibility of distribution-connected resources with Commission-jurisdictional interconnection agreements to receive compensation for reactive power capability (within the standard power factor range) under Schedule 2 of PJM's tariff.[60] The PJM Market Monitor has argued in these cases that such resources should not receive reactive power compensation from PJM because the resources have not established that they provide reactive power capability service to the PJM transmission system, as required by Schedule 2.[61] The PJM Market Monitor likens such resources to pseudo-tied resources, which are excluded from eligibility to file for reactive power compensation under Schedule 2 of PJM's tariff. Other protestors have also argued that distribution-connected resources are not under the operational control of the transmission system operator and therefore cannot provide reactive power capability service consistent with the PJM tariff.[62]

35. We are interested in exploring the PJM Market Monitor's concerns further, as well as whether these concerns are relevant for other regions.

1. Questions Regarding Distribution-Connected Resources

36. The Commission encourages comments regarding the topics broadly discussed above. The following questions are designed to identify whether resources in PJM and elsewhere that are interconnected to a distribution system and participate in wholesale markets are technically capable of providing reactive power to the transmission system in such a way that these resources should be eligible for reactive power capability compensation through transmission rates. Commenters need not answer every question enumerated below.

a. For a distribution-connected resource, is reactive power dispatchable by direction of the transmission provider? Please explain, including whether the answer to this question depends on whether the resource has a

[56] *Smyth,* 169 U.S. at 544 (''the rights of the public would be ignored if rates for the transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public'').

[57] *See supra* Section II.A.4.

[58] *Otter Tail Power Co.,* 99 FERC ¶ 61,019, at 61,092 (2002).

[59] *See supra* note 36.

[60] Schedule 2 of PJM's tariff is nearly identical to Schedule 2 of the *pro forma* OATT. It provides in relevant part as follows (emphasis added):

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities and non-generation resources capable of providing this service *that are under the control of the control area operator* are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation or Other Sources Service must be provided for each transaction *on the Transmission Provider's transmission facilities*. The amount of Reactive Supply and Voltage Control from Generation or Other Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

[61] *See, e.g.,* Mechanicsville Solar, LLC, Protest of the Independent Market Monitor for PJM, Docket No. ER21–2091–000 (filed June 28, 2021).

[62] *See, e.g.,* Northern Virginia Electric Cooperative, Inc., Old Dominion Electric Cooperative, and Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company; Mechanicsville Solar, LLC, Protest and Comments Monitor for PJM, Docket No. ER21–2091–000 (filed June 25, 2021).

Commission-jurisdictional interconnection agreement with the transmission system owner/operator and whether the resource is synchronous or non-synchronous.

b. If reactive power produced by a distribution-connected resource cannot be dispatched by the transmission system operator to provide voltage support to the transmission system, should a distribution-connected resource be compensated through transmission rates for its reactive power capability? Why or why not?

c. If distribution-connected resources are dispatchable for reactive power by the transmission provider, to what extent are distribution-connected resources able to provide reactive power capability service to the transmission system? Are there physical characteristics (*e.g.,* distribution-connected resource characteristics and location, system topology, etc.) or other indicators that could be analyzed to determine accurately whether a distribution connected resource is able to provide reactive power capability service to the transmission system?

d. Are resources connected to a distribution system subject to reactive power capability testing requirements? If so, what are those requirements?

III. Comment Procedures

37. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Initial Comments are due January 31, 2022, and Reply Comments are due February 28, 2022. Comments must refer to Docket No. RM22–2–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

38. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

39. Those unable to file electronically may mail comments via the U.S. Postal Service to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC, 20426. Hand-delivered comments or comments sent via any other carrier should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

40. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

41. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

42. 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.

43. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's 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.*

By direction of the Commission.

Issued: November 18, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26032 Filed 11–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–21–000.

Applicants: Evergreen Gen Lead, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Evergreen Gen Lead, LLC.

Filed Date: 11/22/21.

Accession Number: 20211122–5266.

Comment Date: 5 p.m. ET 12/13/21.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL15–55–004.

Applicants: Modesto Irrigation District and Turlock Irrigation District v. *Pacific Gas and Electric Company.*

Description: Turlock Irrigation District and Modesto Irrigation District submits Motion for Issuance of an order to show cause, Motion for Additional Remedies and Motion for Expedited Response time and expedited action.

Filed Date: 11/22/21.

Accession Number: 20211122–5220.

Comment Date: 5 p.m. ET 12/13/21.

Docket Numbers: EL19–47–000; EL19–63–000; ER21–2444–000; ER21–2877–000.

Applicants: Applicant not Found.

Description: Motion for Clarification or in the Alternative Motion for Waiver of the Independent Market Monitor for PJM.

Filed Date: 11/19/21.

Accession Number: 20211119–5045.

Comment Date: 5 p.m. ET 12/9/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1553–000.

Applicants: Southern California Edison Company.

Description: Annual Formula Transmission Rate Update Filing (TO2022) of Southern California Edison Company.

Filed Date: 11/19/21.

Accession Number: 20211119–5137.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–188–000.

Applicants: Indra Power Business CT, LLC.

Description: Supplement to October 22, 2021 Indra Power Business CT LLC tariff filing.

Filed Date: 11/22/21.

Accession Number: 20211122–5272.

Comment Date: 5 p.m. ET 12/13/21.

Docket Numbers: ER22–353–000.

Applicants: Indra Power Business MI, LLC.

Description: Supplement to November 5, 2021 Indra Power Business MI LLC tariff filing.

Filed Date: 11/22/21.

Accession Number: 20211122–5271.

Comment Date: 5 p.m. ET 12/13/21.

Docket Numbers: ER22–416–000.

Applicants: Indra Power Business NJ, LLC.

Description: Supplement to November 17, 2021 Indra Power Business NJ LLC tariff filing.

Filed Date: 11/22/21.
Accession Number: 20211122–5273.
Comment Date: 5 p.m. ET 12/13/21.
Docket Numbers: ER22–466–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Service Agreement 885 to be effective 2/25/2020.
Filed Date: 11/22/21.
Accession Number: 20211122–5230.
Comment Date: 5 p.m. ET 12/13/21.
Docket Numbers: ER22–467–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Service Agreement No. 899 to be effective 11/19/2020.
Filed Date: 11/23/21.
Accession Number: 20211123–5001.
Comment Date: 5 p.m. ET 12/14/21.
Docket Numbers: ER22–468–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–11–23_SA 3751 NSP-Buffalo Ridge Wind FSA (J545) to be effective 1/23/2022.
Filed Date: 11/23/21.
Accession Number: 20211123–5052.
Comment Date: 5 p.m. ET 12/14/21.
Docket Numbers: ER22–469–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1148R31 American Electric Power NITSA and NOAs to be effective 12/1/2021.
Filed Date: 11/23/21.
Accession Number: 20211123–5098.
Comment Date: 5 p.m. ET 12/14/21.
Docket Numbers: ER22–470–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 3326; Queue No. W4–082 to be effective 1/27/2022.
Filed Date: 11/23/21.
Accession Number: 20211123–5126.
Comment Date: 5 p.m. ET 12/14/21.
Docket Numbers: ER22–471–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: 2021–11–23 NSP–SHKP–SISA–679–0.1.0–NOC to be effective 11/24/2021.
Filed Date: 11/23/21.
Accession Number: 20211123–5157.
Comment Date: 5 p.m. ET 12/14/21.
Docket Numbers: ER22–472–000.
Applicants: Indra Power Business DE LLC.
Description: Baseline eTariff Filing: Tariffs and Agreements to be effective 1/23/2022.
Filed Date: 11/23/21.
Accession Number: 20211123–5201.
Comment Date: 5 p.m. ET 12/14/21.
Docket Numbers: ER22–473–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Service Agreement No. 900 to be effective 2/25/2020.
Filed Date: 11/23/21.
Accession Number: 20211123–5206.
Comment Date: 5 p.m. ET 12/14/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26044 Filed 11–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–40–000]

Commission Information Collection Activities (Ferc–549b, Ferc–549d, Ferc–556, and FERC–561); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections: FERC–549B (Gas Pipeline Rates: Annual Capacity Reports and Index of Customers); FERC–549D (Quarterly Transportation and Storage Report For Intrastate Natural Gas and Hinshaw Pipelines); FERC–556 (Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility); FERC–561 (Annual Report of Interlocking Directorates). The above four collections are a part of this combined notice only and are not being combined into one OMB Control Number.

DATES: Comments on the collections of information are January 31, 2022.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC21–40–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) Delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

1. FERC–549B

Title: FERC–549B, Gas Pipeline Rates: Capacity Reports and Index of Customers.

OMB Control No.: 1902–0169.

Type of Request: Three-year extension of the FERC–549B information collection requirements with no changes to the current reporting requirements.

Abstract: As described below, FERC–549B is comprised of information collection activities at 18 CFR 284.13(b), 284.13(c), 284.13(d)(1), and 284.13(d)(2). The purpose of these

information collection activities is to provide reliable information about capacity availability and price that shippers need to make informed decisions in a competitive market, and to enable shippers and the Commission to monitor marketplace behavior to detect, and remedy anti-competitive behavior.

The regulations at 18 CFR 284.13(b) and 284.13(d)(1) require each interstate pipeline to post information about firm and interruptible service on its internet website, and in downloadable file formats. The information required at 18 CFR 284.13(b) includes identification of the shippers receiving service, and details about contracts for firm service, capacity release transactions,[1] and agreements for interruptible service. The pipeline must maintain access to that information for a period not less than 90 days from the date of posting. The regulation at 18 CFR 284.13(d)(1) requires equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled. In addition, each interstate pipeline must provide information about the volumes of no-notice transportation[2] provided. This information collection activity enables shippers to release transportation and storage capacity to other shippers wanting to obtain capacity. The information results in reliable capacity information availability and price data that shippers need to make informed decisions in a competitive market and enables shippers and the Commission to monitor the market for potential abuses.

The regulation at 18 CFR 284.13(c) requires each interstate pipeline to file with the Commission an index of all its firm transportation and storage customers under contract on the first business day of each calendar quarter. The index of customers also must be posted on the pipeline's own internet website, in downloadable file formats, and must be made available until the next quarterly index is posted. The requirements for the electronic index can be obtained from the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426.

The regulation at 18 CFR 284.13(d)(2) requires an annual peak-day capacity report of all interstate pipelines, including natural gas storage-only companies. This report is generally a short report showing the peak day design capacity or the actual peak day capacity achieved, with a short explanation, if needed. The regulation provides that an interstate pipeline must make an annual filing by March 1 of each year showing the estimated peak day capacity of the pipeline's system, and the estimated storage capacity and maximum daily delivery capability of storage facilities under reasonably representative operating assumptions and the respective assignments of that capacity to the various firm services provided by the pipeline.

Types of Respondents: Respondents for this data collection are interstate pipelines and storage facilities subject to FERC regulation under the Natural Gas Act.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden[3] and cost[4] for FERC–549B as shown in the following table:

FERC–549B—(GAS PIPELINE RATES: CAPACITY REPORTS AND INDEX OF CUSTOMERS)

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost ($) per response	Total annual burden & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Capacity Reports under 284.13(b) & 284.13(d)(1)	168	6	1,008	145 hrs.; $12,615	146,160 hrs.; $12,715,920	$75,690
Peak Day Annual Capacity Report under 284.13(d)(2)	168	1	168	10 hrs.; $870	1,680 hrs.; $146,160	870
Index of Customers under 284.13(c)[5]	168	4	672	3 hrs.; $261	2,016 hrs.; $175,392	1,044
Total			1,848		149,856 hrs.; $13,037,47240	77,604

2. FERC–549D

Title: FERC–549D, Quarterly Transportation and Storage Report for Intrastate Natural Gas and Hinshaw Pipelines.

OMB Control No.: 1902–0253.

Type of Request: Three-year extension of the FERC–549D information collection requirements with no changes to the current reporting requirements.

Abstract: The reporting requirements under FERC–549D are required to carry out the Commission's policies in accordance with the general authority in Section 1(c) of the Natural Gas Act (NGA)[6] and Section 311 of the Natural Gas Policy Act of 1978 (NGPA).[7] This collection promotes transparency by making available intrastate and Hinshaw pipeline transactional information. The Commission collects the data on a standardized form with all requirements outlined in 18 CFR 284.126.

The FERC–549D collects the following information:

[1] As provided at 18 CFR 284.8, an interstate pipeline that offers transportation service on a firm basis must include in its tariff a mechanism for firm shippers to release firm capacity to the pipeline for resale.

[2] No-notice transportation allows for the reservation of pipeline capacity on demand without incurring any penalties.

[3] For FERC–549B, FERC–549D, FERC–556, and FERC–561, ''burden'' is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[4] For FERC–549B, the Commission staff believes that industry is similarly situated to the Commission in terms of wages and benefits. Therefore, cost estimates are based on FERC's 2021 average annual wage (and benefits) for a full-time employee of $180,703 (or $87.00/hour).

[5] The burden per response is based on burden expended on similar forms and other similar FERC reporting requirements (*e.g.* capacity reports).

[6] 15 U.S.C. 717(c).

[7] 15 U.S.C. 3371.

- Full legal name and identification number of the shipper receiving service, including whether the pipeline and the shipper are affiliated;
- Type of service performed;
- The rate charged under each contract;
- The primary receipt and delivery points for each contract;
- The quantity of natural gas the shipper is entitled to transport, store, or deliver for each transaction;
- The duration of the contract, specifying the beginning and (for firm contracts only) ending month and year of current agreement;
- Total volumes transported, stored, injected or withdrawn for the shipper; and
- Annual revenues received for each shipper, excluding revenues from storage services.

Filers submit the Form-549D on a quarterly basis.

Type of Respondents: Intrastate natural gas pipelines under NGPA Section 311 authority and Hinshaw pipelines.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden and cost [8] for the information collection as follows:

FERC–549D—Quarterly Transportation and Storage Report for Intrastate Natural Gas and Hinshaw Pipelines

	Average annual number of respondents	Average annual number of responses per respondent	Average annual total number of responses	Average burden hrs. & cost ($) per response	Total annual burden hours & total annual cost ($) (rounded)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
PDF filings	120	4	480	12.5 hrs. $1,161.50	6,000 hrs. $557,520	$4,646
Total			480		6,000 hrs.; $557,520	

3. FERC–556

Title: FERC–556, Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility.

OMB Control No.: 1902–0075.

Type of Request: Three-year extension of the FERC–556 information collection requirements with no changes to the current reporting requirements.

Abstract: Form No. 556 is required to implement sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 [9] (PURPA). FERC is authorized, under those sections, to encourage cogeneration and small power production and to prescribe such rules as necessary to carry out the statutory directives.

A primary statutory objective is efficient use of energy resources and facilities by electric utilities. One means of achieving this goal is to encourage production of electric power by cogeneration facilities which make use of reject heat associated with commercial or industrial processes, and by small power production facilities which use other wastes and renewable resources. PURPA encourages the development of small power production facilities and cogeneration facilities that meet certain technical and corporate criteria through establishment of various regulatory benefits. Facilities that meet these criteria are called Qualifying Facilities (QFs).

FERC's regulations in 18 CFR part 292, as relevant here, specify: (a) The certification procedures which must be followed by owners or operators of small power production and cogeneration facilities; (b) the criteria which must be met; (c) the information which must be submitted to FERC in order to obtain qualifying status; and (d) the PURPA benefits which are available to QFs to encourage small power production and cogeneration.

18 CFR part 292 also exempts QFs from certain corporate, accounting, reporting, and rate regulation requirements of the Federal Power Act,[10] certain state laws, and the Public Utility Holding Company Act of 2005.[11]

Type of Respondents: Facilities that are self-certifying their status as a cogenerator or small power producer or that are submitting an application for FERC certification of their status as a cogenerator or small power producer.

Estimate of Annual Burden: The Commission estimates the burden and cost for this information collection as follows:

[8] For FERC–549D, the hourly wage figure is $92.92/hour (rounded). This cost represents the average hourly cost (for wages plus benefits) of four career fields: 23–0000 Legal ($142.25/hour), 13–2011 Accountants ($57.41/hour), 13–1111 Management Analyst ($68.39/hour), and 11–3021 Computer and Information Sys. ($103.61/hour). These June 2021 figures were compiled using Bureau of Labor Statistics data that were specific to each occupational category: *http://bls.gov/oes/current/naics2_22.htm.*

[9] 16 U.S.C. 796 and 824i.

[10] 16 U.S.C. 791a, *et seq.*

[11] 42 U.S.C. 16451 through 165463.

[12] The Commission staff believes that industry is similarly situated in terms of wages and benefits. Therefore, cost estimates are based on FERC's 2021 average annual wage (and benefits) for a full-time employee of $180,703 (or $87.00/hour).

[13] MW = megawatt.

[14] The regulation at 18 CFR 292.203(d) exempts small power production facilities and cogeneration facilities from self-certification if they have a net power production capacity of 1 MW or less. However, we are disclosing burdens for these filings because some facilities seek status as qualifying facilities regardless of their capacity.

FERC–556—CERTIFICATION OF QUALIFYING FACILITY STATUS FOR A SMALL POWER PRODUCTION OR COGENERATION FACILITY

Facility type	Filing type	Number of respondents (1)	Number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours and cost per response [12] (4)	Total annual burden hours and total annual cost (rounded) (3) * (4) = (5)	Cost per respondent ($) (rounded) (5) ÷ (1)
Cogeneration Facility >1 MW [13]	Self-certification.	68	2.14	145.52	3.54 hrs; $307.98.	515.14 hrs; $44,817.18.	$659.07
Cogeneration Facility >1 MW ..	Application for FERC certification.	28.89	2.14	61.81	50 hrs; $4,350 ...	3,090.52 hrs; $268,875.24.	930.26
Small Power Production Facility >1 MW.	Self-certification.	2,698	2.14	5,773.72	3.54 hrs; $307.98.	20,438.97 hrs; $1,778,190.39.	659.07
Small Power Production Facility >1 MW.	Application for FERC certification.	0	2.14	0	50 hrs; $4,350 ...	0 hrs; $0	0
Cogeneration and Small Power Production Facility ≤1 MW (Self-Certification) [14].	Self-certification.	697	2.14	1,491.58	3.54 hrs; $307.98.	2,237.37 hrs; $194,651.19.	279.27
Total	.....	3,469	.....	7,423.66	.....	26,282 hrs; $2,286,534.	.....

4. FERC–561

Title: FERC–561, Interlocking Directorates.

OMB Control No.: 1902–0099.

Abstract: The FERC Form 561 responds to the Federal Power Act (FPA) requirements for annual reporting of similar types of positions which public utility officers and directors hold with financial institutions, insurance companies, utility equipment and fuel providers, and with any of an electric utility's 20 largest purchasers of electric energy (*i.e.,* the 20 entities with high expenditures of electricity). The FPA specifically defines most of the information elements in the Form 561 including the information that must be filed, the required filers, the directive to make the information available to the public, and the filing deadline.

The Commission uses the information required by 18 CFR 131.31 and collected by the Form 561 to implement the FPA requirement that those who are authorized to hold interlocked directorates annually disclose all the interlocked positions held within the prior year. The Form 561 data identifies persons holding interlocking positions between public utilities and other entities, allows the Commission to review these interlocking positions, and allows identification of possible conflicts of interest.

Type of Respondents: Each officer or director of a public utility also holding the position of officer, director, partner, appointee, or representative of any other entity listed in section 305(c)(2) of the FPA (including but not limited to organizations primarily engaged in the business of providing financial services or credit, insurance companies, security underwriters, electrical equipment suppliers, fuel provider, and any entity which is controlled by one or more of these entities).

Estimate of Annual Burden: The Commission estimates the total annual burden and cost [15] for this information collection as follows:

FERC FORM 561, ANNUAL REPORT OF INTERLOCKING DIRECTORATES

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
2,700	1	2,700	0.25 hrs.; $21.75	675 hrs.; $58,725	$21.75

Comments are invited on FERC–549B, FERC–549D, FERC–556, and/or FERC–561, regarding: (1) Whether each collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of each collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of each information collection; and (4) ways to minimize the burden of each collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[15] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–561 are approximately the same as the Commission's average cost. The FERC 2021 average salary plus benefits for one FERC full-time equivalent (FTE) is $180,703/year (or $87.00/hour).

Dated: November 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26036 Filed 11–29–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0329; FRL–9314–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Certification and Compliance Requirements for Nonroad Spark-Ignition Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Certification and Compliance Requirements for Nonroad Spark-Ignition Engines (EPA ICR Number 1695.14, OMB Control Number 2060–0338), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the Nonroad Spark-Ignition Engines ICR, which is currently approved through January 31, 2022. Public comments were previously requested via the **Federal Register** on June 2, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or December 30, 2021.

ADDRESSES: Submit your comments to EPA, referencing the Docket ID No. EPA–HQ–OAR–2021–0329, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Julian Davis, Attorney Adviser, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4029; fax number 734–214–4869; email address: *davis.julian@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, will be available in the public docket, EPA–HQ–OAR–2021–0329, for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This information collection is requested under the authority of Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) Under this Title, EPA is charged with issuing certificates of conformity for those engines which comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system, and test data. This information is organized by ''engine family'' groups expected to have similar emission characteristics. The emission values achieved during certification testing may also be used in the Averaging, Banking, and Trading (ABT) Program. The program allows manufacturers to bank credits for engine families that emit below the standard and use the credits for families that emit above the standard. They may also trade banked credits with other manufacturers. Participation in the ABT program is voluntary. Different categories of spark-ignition engines may also be required to comply with production-line testing (PLT) and in-use testing. All manufacturers must comply with recordkeeping requirements for certification and testing and follow the applicable labelling provisions for production and introduction into U.S. commerce. All the above information is collected electronically by the Gasoline Engine Compliance Center (GECC), Compliance Division, Office of Transportation and Air Quality (OTAQ), Office of Air and Radiation of the U.S. Environmental Protection Agency.

Form Numbers: 5900–450, 5900–451, 5900–452, 5900–90, 5900–133, 5900–131, 5900–453, 5900–454, 5900–455, 5900–134, 5900–456, 5900–457, 5900–458, 5900–459, 5900–92, 5900–91, 5900–130, 5900–93, 5900–93, 5900–460, 5900–463, 5900–464, 5900–465, 5900–466, 5900–467.

Respondents/affected entities: Respondents are manufacturers of nonroad engines within the following North American Industry Classification System (NAICS) code: 333618, 336312, 336999, 336991, 333112, 335312.

Estimated number of respondents: 430 (total).

Frequency of response: Yearly for certification, production, ABT, and warranty reports.

Total estimated burden: 738,603 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $95,360,655 (per year), includes $30,243,492.65 annualized capital or operation & maintenance costs.

Changes in Estimates: This ICR incorporates Emissions Defect Information Report (EDIR) and Voluntary Emissions Recall Report (VERR) obligations within this ICR. The EDIR and VERR have been segregated from 2060–0048 for nonroad spark-ignition engines and vehicles and incorporated into our computations for reporting and notice purposes in this ICR. Our previous computation and renewal request failed to provide estimates of Defect, Recall, Evaporative Components, and compliance testing, as differentiated from certification testing. In addition, the California Air Resources Board has adopted a new fuel standard for spark-ignition engines, that has taken affect. Manufacturers must conduct new testing to satisfy the new fuel requirement and durability demonstration, which has increased the number of manufacturers that must conduct new testing at the time of certification. These increases in testing, more detailed compliance testing and reporting requirements, consolidation of additional regulatory programs applicable to NRSI engines and vehicles, has increased the burden now assessed to comply across all these

industries for these regulatory requirements.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–25962 Filed 11–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–9309; FRL–9309–01–OAR]

Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Environmental Protection Agency (EPA) is announcing a public meeting of the Clean Air Act Advisory Committee (CAAAC) to be conducted via remote/virtual participation only. The EPA renewed the CAAAC charter on November 19, 2020, to provide independent advice and counsel to EPA on economic, environmental, technical, scientific and enforcement policy issues associated with implementation of the Clean Air Act of 1990.

DATES: The CAAAC will hold its next public meeting remotely/virtually on Wednesday, December 15, 2021, from 1 p.m. to 4 p.m. (EST). Members of the public may register to listen to the meeting or provide comments, by emailing *caaac@epa.gov* by 5 p.m. (EST) December 14, 2021. In addition, the CAAAC will hold the next public meeting remotely/virtually on Tuesday, February 8, 2022, and Wednesday, February 9, 2022, from 1 p.m. to 4 p.m. (EST). Members of the public may register to listen to the meeting or provide comments, by emailing *caaac@epa.gov* by 5 p.m. (EST) February 7, 2022.

FOR FURTHER INFORMATION CONTACT: Lorraine Reddick, Designated Federal Official, Clean Air Act Advisory Committee (6103A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1293; email address: *reddick.lorraine@epa.gov.* Additional information about this meeting, the CAAAC, and its subcommittees and workgroups can be found on the CAAAC website: *http://www.epa.gov/caaac/.*

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next public meeting remotely/virtually on Wednesday, December 15, 2021, from 1 p.m. to 4 p.m. (EST). In addition, the CAAAC will hold the next public meeting remotely/virtually on Tuesday, February 8, 2022 and Wednesday, February 9, 2022, from 1 p.m. to 4 p.m. (EST).

The committee agenda and any documents prepared for the meeting will be publicly available on the CAAAC website at *http://www.epa.gov/caaac/* prior to the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available on the CAAAC website or by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2021–9309–1.

The docket office can be reached by email at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

For information on access or services for individuals with disabilities, please contact Lorraine Reddick at *reddick.lorraine@epa.gov,* preferably at least 7 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: November 23, 2021.

John Shoaff,

Director, Office of Air Policy and Program Support, Environmental Protection Agency.

[FR Doc. 2021–25996 Filed 11–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9237–01–R9]

Revision of Approved State Primacy Program for the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the State of California revised its approved State primacy program under the federal Safe Drinking Water Act (SDWA) by adopting statutory provisions that effectuate the federal Administrative Penalty Authority (APA). The Environmental Protection Agency (EPA) has determined that California's revision request meets the applicable SDWA program revision requirements and the statutes adopted by California are no less stringent than the corresponding federal regulations and that the State's request for a program revision meets applicable SDWA primacy requirements. Therefore, EPA approves this revision to California's approved state primacy program. However, this determination on California's request for approval of a program revision shall take effect in accordance with the procedures described below in the **SUPPLEMENTARY INFORMATION** section of this notice after the opportunity to request a public hearing.

DATES: A request for a public hearing must be received or postmarked before December 30, 2021.

ADDRESSES: Documents relating to this determination that have been submitted by the State are available for public inspection by appointment at the following locations:

Redding, CA: 364 Knollcrest Drive, Suite 101, Redding, CA 96002, for an appointment at this location please call (530) 224–4800;

Sacramento, CA: 1001 I Street, Sacramento, CA 95814, for an appointment at this location please call (916) 449–5577;

Fresno, CA: 265 West Bullard Avenue, Suite 101, Fresno, CA 93704, for an appointment at this location please call (559) 447–3300; or

Glendale, CA: 500 North Central Avenue, Suite 500, Glendale, CA 91203, for an appointment at this location please call (818) 551–2004.

Documents may also be provided by email by submitting a request to *DDWRegUnit@waterboards.ca.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Garcia-Bakarich, EPA Region 9, Drinking Water Section via telephone at (415) 972–3237 or via email address at *garcia-bakarich.luis@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background. EPA approved California's initial application for primary enforcement authority (''primacy'') of drinking water systems on June 9, 1978 (43 FR 25180). Since initial primacy approval, EPA has approved various revisions to California's primacy program. For the revision covered by this action, EPA promulgated rules incorporating the APA as a requirement of primacy at 40 CFR 142.10(f) on April 28, 1998 (63 FR 23362) to codify the requirements of Section 1413(a)(7) of SDWA. Section 1413(a)(7) of SDWA requires that, as a condition of primacy, states have administrative penalty authority for all violations of their approved primacy program, unless prohibited by the state constitution. Specifically, the APA requires that states must have the authority to impose administrative penalties on public water systems (PWSs) serving a population greater than 10,000 individuals in an amount that is not less than $1,000 per day per violation. For PWSs serving a population of 10,000 individuals or less,

states must have the authority to impose an administrative penalty that is ''adequate to ensure compliance.'' EPA has determined that the APA requirements were adopted into the California Health and Safety Code (HSC) Section 116650 in a manner that California's statute is comparable to and no less stringent than the federal requirements. EPA has also determined that California's program revision request meets all of the regulatory requirements for approval, as set forth in 40 CFR 142.12, including a side-by-side comparison of the federal requirements demonstrating the corresponding state authorities, a review of the requirements contained in 40 CFR 142.10 necessary for states to attain and retain primary enforcement responsibility, and a statement by the California Attorney General certifying that California's laws and regulations to carry out the program revisions were duly adopted and are enforceable. The Attorney General's statement also affirms that there are no environmental audit privilege and immunity laws that would impact California's ability to implement or enforce the California laws and regulations pertaining to the program revision. Therefore, EPA approves this revision of California's approved State primacy program. The Technical Support Document, which provides EPA's analysis of California's program revision request, is available by email by submitting a request to the following email address: *R9dw-program@epa.gov.* Please note ''Technical Support Document'' in the subject line of the email.

Public Process. Any interested person may request a public hearing on this determination. A request for a public hearing must be received before December 30, 2021 and addressed to the Regional Administrator of EPA Region 9, via the following email address: *R9dw-program@epa.gov* or contact the EPA Region 9 contact person listed above in this notice by telephone if you do not have access to email. Please note ''State Program Revision Determination'' in the subject line of the email. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a timely request for a public hearing is made, then EPA Region 9 may hold a public hearing. Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely and appropriate request for a hearing or a request for a hearing was denied by the Regional Administrator for being frivolous or insubstantial, and the Regional Administrator does not elect to hold a hearing on her own motion, EPA's approval shall become final and effective on December 30, 2021, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: November 8, 2021.

Elizabeth Adams,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 2021–25965 Filed 11–29–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 15, 2021.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Michael J. Klaassen Revocable Trust and Carol S. Klaassen Family Trust, Michael Klaassen, as trustee, all of Wichita, Kansas;* to join the Klaassen Family Group, a group acting in concert, to retain voting shares of Chisholm Trail Financial Corporation, and thereby indirectly retain voting shares of Stryv Bank, both of Wichita, Kansas.

Additionally, The Michael J. Klaassen Qualified Subchapter S Trust, Michael Klaassen, as trustee, both of Wichita, Kansas; Linda J. Klaassen Revocable Trust, Linda Klaassen, as trustee, Kourt Klaassen, Derek Ryan Klaassen, and Brent Klaassen, all of Whitewater, Kansas; Trevor J. Klaassen, Oklahoma City, Oklahoma; and Mitchell R. Klaassen, Frisco, Texas; to join the Klaassen Family Group to acquire voting shares of Chisholm Trail Financial Corporation, and thereby indirectly acquire voting shares of Stryv Bank.

Board of Governors of the Federal Reserve System, November 24, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–26061 Filed 11–29–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH 345]

National Institute for Occupational Safety and Health Tribal Consultation Session

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for testimony.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), within the Centers for Disease Control and Prevention (CDC) announces a CDC Tribal Consultation Session. CDC will host American Indian and Alaska Native (AI/AN) Federally Recognized Tribes for a virtual tribal consultation session on the NIOSH draft strategic plan entitled *American Indian and Alaska Native Worker Safety and*

Health Strategic Plan. The proceedings will be open to the public.

DATES: The tribal consultation will be held February 3, 2022, from 4:15 p.m. to 6:00 p.m., EST.

NIOSH will accept written tribal testimony until 5:00 p.m., EST, on February 24, 2022.

ADDRESSES: Written tribal testimony should be submitted by either of the following ways:

- *By Email: niocindocket@cdc.gov;* or
- *By Mail:* Sherri Diana, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All submissions must include Tribal affiliation and Docket number (NIOSH 345). All relevant comments, including any personal information provided, will be posted without change.

FOR FURTHER INFORMATION CONTACT: David Caruso, National Institute for Occupational Safety and Health (NIOSH), Western States Division, P.O. Box 25226, Denver, Colorado 80225–0226; Telephone: (303) 236–5909 (this is not a toll-free number); Email: *DCaruso@cdc.gov; or* Elizabeth Dalsey, NIOSH Western State Division, P.O. Box 25226, Denver, Colorado 80225–0226; Telephone: (303) 236–5955 (this is not a toll-free number; Email: *EDalsey@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Federally Recognized Indian Tribes represented by the Tribal President, Tribal Chair, or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s) may participate in this consultation by submitting written views, opinions, recommendations, and data. Testimony may be submitted on any topic related to this draft strategic plan. Testimony received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your testimony or supporting materials you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your testimony, that information will be on public display. NIOSH will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. NIOSH will carefully consider all testimony submitted into the docket.

Oral Tribal Testimony: Based on the number of participants giving testimony and the time available, it may be necessary to limit the time for each presenter. We will adjourn the tribal consultation meeting early if all attendees who requested to provide oral testimony in advance of and during the consultation have delivered their testimony.

Written Tribal Testimony: Written testimony will be accepted per the instructions provided in the **ADDRESSES** section above. Written testimony received in advance of the meeting will be included in the official record of the meeting. The consultation meeting will be recorded, transcribed, and posted without change to *https://www.cdc.gov/niosh/docket/,* including any personal information provided.

This meeting is being held in accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Government and CDC/ATSDR's Tribal Consultation Policy which can be found at *https://www.cdc.gov/tribal/documents/consultation/policy475.pdf.*

Purpose: The purpose of the consultation meeting is to advance NIOSH's support for, and collaboration with, federally recognized American Indian and Alaska Native (AI/AN) tribes, and to improve the health of AI/AN tribal nations by pursuing research and outreach activities to prevent injuries, illnesses, and fatalities to AI/AN workers. To advance these goals, CDC conducts government-to-government consultations with Indian Tribes represented by the Tribal President, Tribal Chair, or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s) to the extent practicable and permitted by law before CDC takes any action that will significantly affect Indian Tribes. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding.

Matters To Be Considered: NIOSH is hosting this meeting to receive input from federally recognized tribes on the development of an American Indian and Alaska Native Worker Safety and Health Strategic Plan. AI/AN workers account for 2.7 million or 1.8% of the total U.S. workforce. These workers are employed in a wide variety of occupations, with the highest numbers in office and administrative support, sales and related occupations, management, transportation, and food preparation and services. Tribes are often the largest employer on tribal lands. Many AI/AN workers are also employed through tribal enterprises such as medical care, housing, manufactured products, food production, livestock production, and tourism. National data on occupational injuries, illnesses, and fatalities among AI/AN workers are scarce, and there is limited research on worker safety, health, and well-being in tribal communities. Given the lack of systematic data collection, the true numbers of occupational injuries, illnesses, and fatalities are likely much higher. NIOSH is proposing research and outreach activities to enhance worker safety and health in tribal communities and requests input on the draft *American Indian and Alaska Native Worker Safety and Health Strategic Plan, 2022–2031.* Agenda items are subject to change as priorities dictate.

Meeting Information: Zoom Virtual Tribal Consultation. If you wish to attend the virtual consultation session, please register by accessing the CDC web page at: *https://cdc.zoomgov.com/meeting/register/vJItdeipqzIvGgMKRWjU6mOIfMiRxs3dggw.* Instructions to access the Zoom virtual consultation will be provided in the link following registration. All elected tribal officials are encouraged to submit written tribal testimony by mail, or email. Additional information about CDC/ATSDR's Tribal Consultation Policy can be found at *https://www.cdc.gov/tribal/consultation-support/tribal-consultation/sessions.html.*

The Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities.

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2021–26016 Filed 11–29–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0706]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled National Program of Cancer Registries Program Evaluation Instrument (NPCR–PEI) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 26, 2021 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Program of Cancer Registries Program Evaluation Instrument (NPCR–PEI) (OMB Control No. 0920–0706, Exp. 02/28/2021)—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is responsible for administering and monitoring the National Program of Cancer Registries (NPCR). The NPCR provides technical assistance and funding, and sets program standards to assure that complete local, state, regional, and national cancer incidence data are available for national and state cancer control and prevention activities and health planning activities. The Program Evaluation Instrument (PEI) has been used for 28 years to monitor the performance of NPCR grantees in meeting the required Program Standards. CDC currently supports 50 population-based cancer registries (CCR) in 46 states, two territories, the District of Columbia, and the Pacific Islands. The National Cancer Institute supports the operations of CCRs in the four remaining states. The Program Evaluation Instrument (NCPR–PEI) includes questions about the following categories of registry operations: (1) Staffing, (2) legislation, (3) administration, (4) reporting completeness, (5) data exchange, (6) data content and format, (7) data quality assurance, (8) data use, (9) collaborative relationships, (10) advanced activities, and (11) survey feedback. Examples of information that can be obtained from various questions include, but are not limited to: (1) Number of filled staff full-time positions by position responsibility; (2) revision to cancer reporting legislation; (3) various data quality control activities; (4) data collection activities as they relate to achieving NPCR program standards for data completeness; and (5) whether registry data is being used for comprehensive cancer control programs, needs assessment/program planning, clinical studies, or incidence and mortality estimates.

The NPCR–PEI is needed to receive, process, evaluate, aggregate, and disseminate NPCR program information. The information is used by CDC and the NPCR-funded registries to monitor progress toward meeting established program standards, goals, and objectives; to evaluate various attributes of the registries funded by NPCR; and to respond to data inquiries made by CDC and other agencies of the federal government. CDC requests OMB approval for a period of three years to collect information in the winter of 2022 and 2024, and the new project period begins July 1, 2022. There are no costs to the respondents other than their time. CDC requests approval for an estimated 66 annualized burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
NPCR Awardees	PEI (Online)	30	1	2
NPCR Awardees	REI (Paper)	3	1	2

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–26005 Filed 11–29–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1100]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Identification of Behavioral and Clinical Predictors of Early HIV Infection (Project DETECT)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 12, 2021 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Identification of Behavioral and Clinical Predictors of Early HIV Infection (Project DETECT) (OMB Control No. 0920–1100, Exp. 1/31/2022)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Division of HIV Prevention (DHP) requests a three-year Extension for an existing data collection titled ''Identification of Behavioral and Clinical Predictors of Early HIV Infection (Project DETECT).''

CDC provides guidelines for HIV testing and diagnosis for the United States, as well as technical guidance for its grantees. The purpose of this project is to assess characteristics of HIV testing technologies and to update these guidance documents to reflect the latest available testing technologies, their performance characteristics, and considerations regarding their use. Specifically, CDC will describe behavioral and clinical characteristics of persons with early infection to help HIV test providers (including CDC grantees) choose which HIV tests to use, and target tests appropriately to persons at different levels of risk. This information will be disseminated primarily through guidance documents and articles in peer-reviewed journals.

The primary study population will be persons at high risk for, or diagnosed with HIV infection, many of whom will be men who have sex with men (MSM), transgender women, minorities, and persons who inject drugs (PWIDs) because the majority of new HIV infections occur each year among these populations. The goals of the project are to: (1) Characterize the performance of new HIV tests for detecting established and early HIV infection at the point of care, relative to each other and to currently used gold standard, non-point-of-care (POC) tests, and (2) identify behavioral and clinical predictors of early HIV infection.

Project DETECT will enroll 1,867 persons annually from two study sites (Seattle and Baltimore). The study will be conducted in two phases.

Phase 1: After a clinic client consents to participate, he/she will be assigned a unique participant ID and will then undergo testing with up to seven new HIV tests under study. While awaiting test results, participants will undergo additional specimen collections and complete the Phase 1 Enrollment Survey.

Phase 2: All Phase 1 participants whose results on the seven tests under investigation are not in agreement with one another (''discordant'') will be considered to have a potential early HIV infection. Nucleic acid amplification testing that detects viral nucleic acids will be conducted to confirm an HIV diagnosis and rule out false positives. Study investigators expect that each year, 50 participants with discordant test results will be invited to participate in serial follow-up specimen collections to assess the time point at which all HIV test results resolve and become concordant positive (indicating enrollment during early infection) or concordant negative (indicating one or more false-positive test results in Phase 1).

The follow-up schedule will consist of up to nine visits scheduled at regular intervals over a 70-day period. At each follow-up visit, participants will be tested with the new HIV tests and additional oral fluid and blood specimens will also be collected for storage and use in future HIV test evaluations at CDC. Participants will be followed only to the point at which all their test results become concordant. At each time point, participants will be asked to complete the Phase 2 HIV Symptom and Care survey to collect information on symptoms associated with early HIV infection as well as access to HIV care and treatment since the last Phase 2 visit. When all tests become concordant (*i.e.,* at the last Phase 2 visit) participants will complete the Phase 2 Behavioral Survey to identify any behavioral changes during follow-up. Of the 50 Phase 2 participants; it is estimated that no more than 26, annually, will have early HIV infection.

All data for the proposed information collection will be collected via an

electronic Computer Assisted Self-Interview (CASI) survey. Participants will complete the surveys on an encrypted computer, with the exception of the Phase 2 Symptom and Care survey, which will be administered by a research assistant and then electronically entered into the CASI system. Data to be collected via CASI include questions on sociodemographic characteristics, medical care, HIV testing, pre-exposure prophylaxis, antiretroviral treatment, sexually transmitted diseases (STD) history, symptoms of early HIV infection, substance use and sexual behavior. Data from the surveys will be merged with HIV test results and relevant clinical data using the unique identification (ID) number. Data will be stored on a secure server managed by the awardee's Information Technology (IT) Services.

The participation of respondents is voluntary. There is no cost to the respondents other than their time. The total estimated annual burden hours for the proposed project are 1,594 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Persons eligible for study	Phase 1 Consent	2,334	1	15/60
Enrolled participants	Phase 1 Enrollment Survey	1,867	1	30/60
	Phase 2 Consent	50	1	15/60
	Phase 2 HIV Symptom and Care survey	50	9	5/60
	Phase 2 Behavioral Survey	50	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–26003 Filed 11–29–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of Intent To Issue Two Replacement Awards To Provide Residential Services (Shelter)

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Issuance of Two Replacement Awards to BCFS Health and Human Services (BCFS).

SUMMARY: ACF, ORR announces the intent to award two Replacement Awards in the amount of up to $77,496,593 to BCFS Health and Human Services in Los Fresnos, Texas. On September 17, 2021, Comprehensive Health Services, LLC (CHS) relinquished two federally funded discretionary grants. Per HHS policy, ORR identified the current recipient BCFS Health and Human Services to transfer the current permanent capacity to provide shelter for apprehensions of Unaccompanied Children (UC) at the Southwest Border. The continuation of permanent capacity is a prudent step to ensure that ORR is able to meet its responsibility, by law, to provide shelter and appropriate services for UC referred to its care by the Department of Homeland Security. The purpose of this award is to ensure the continuation of residential services for the capacity of 560 shelter beds for UC.

DATES: The proposed period of performance is December 1, 2021–September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Stephen Antkowiak, Office of Refugee Resettlement, Division of Unaccompanied Children Operations, 330 Street SW, Washington, DC 20447. Phone: 202–260–6165. Email: *stephen.antkowiak@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR announces the intent to award the following replacement awards:

Original recipient	Recipient	Location (city, ST)	Award amount
CHS	BCFS Health and Human Services.	Los Fresnos, TX	up to $24,262,279.
CHS	BCFS Health and Human Services.	Los Fresnos, TX	Up to $53,234,314.

This award will prevent the disruption in residential services currently available at the two mentioned CHS locations and prevent children unnecessarily pending placement from Border Patrol. ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing if applicable, experience, and appropriate level of trained staff to meet those requirements.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of UC from the Commissioner of the former Immigration and Naturalization Service to the Director of ORR within HHS.

(B) The *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996); pertinent regulations; and ORR policies and procedures.

Elizabeth Leo,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2021–25968 Filed 11–29–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of Intent To Issue Replacement Award To Provide Residential Services (Shelter)

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of a replacement award to Urban Strategies.

SUMMARY: ACF, ORR announces the issuance of a replacement award in the amount of up to $18,871,413 to Urban Strategies, San Benito, Texas. On September 17, 2021, Comprehensive Health Services, LLC (CHS) relinquished a federally funded discretionary grant. Per HHS policy, ORR identified the current recipient Urban Strategies to transfer the current permanent capacity to provide shelter for apprehensions of Unaccompanied Children (UC) at the Southwest Border. The continuation of permanent capacity is a prudent step to ensure that ORR is able to meet its responsibility, by law, to provide shelter and appropriate services for UC referred to its care by the Department of Homeland Security. The purpose of this award is to ensure the continuation of residential services for the capacity of 100 shelter beds for UC.

DATES: The proposed period of performance is December 1, 2021–September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Stephen Antkowiak, Office of Refugee Resettlement, Division of Unaccompanied Children Operations, 330 Street SW, Washington, DC 20447. Phone: 202–260–6165. Email: *stephen.antkowiak@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR announces the issuance of a replacement award in the amount of up to $18,871,413 to Urban Strategies, San Benito, Texas. This award will prevent the disruption in residential services currently available at the CHS San Benito location and prevent children unnecessarily pending placement from Border Patrol.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, if applicable, experience, and appropriate level of trained staff to meet those requirements.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of UC from the Commissioner of the former Immigration and Naturalization Service to the Director of ORR within HHS.

(B) The *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996); pertinent regulations; and ORR policies and procedures.

Elizabeth Leo,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2021–25971 Filed 11–29–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of Intent To Issue Two Replacement Awards To Provide Residential Services (Shelter)

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of two replacement awards to Southwest Key Programs, Incorporated (SWK, Inc.).

SUMMARY: ACF, ORR announces the issuance of two replacement awards to SWK, Inc. in the amount of up to $178,007,159. On September 17, 2021, Comprehensive Health Services, LLC (CHS) relinquished two federally funded discretionary grants. Per HHS policy, ORR identified current recipient SWK, Inc. to transfer the current permanent capacity to provide shelter for apprehensions of Unaccompanied Children (UC) at the Southwest Border. The continuation of permanent capacity is a prudent step to ensure that ORR is able to meet its responsibility, by law, to provide shelter and appropriate services for UC referred to its care by the Department of Homeland Security. The purpose of these awards is to ensure the continuation of residential services for the capacity of 1,312 shelter beds for UC.

DATES: The proposed period of performance is December 1, 2021–September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Stephen Antkowiak, Office of Refugee Resettlement, Division of Unaccompanied Children Operations, 330 Street SW, Washington, DC 20447. Phone: 202–260–6165. Email: *stephen.antkowiak@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR announces the intent to award the following replacement awards:

Original recipient	Recipient	Location (city, ST)	Award amount
CHS	SWK, Inc	Los Fresnos, TX	up to $93,837,082.
CHS	SWK, Inc	El Paso, TX	up to $84,170,077.

ORR is continuously monitoring its capacity to shelter UC referred to HHS, as well as the information received from interagency partners, to inform any future decisions or actions. ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet those requirements.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of UC from the Commissioner of the former Immigration and Naturalization Service to the Director of ORR within HHS.

(B) The *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal.

1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post-release services under certain conditions to eligible children. All programs must comply with the *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996); pertinent regulations; and ORR policies and procedures.

Elizabeth Leo,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2021–25973 Filed 11–29–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Mother and Infant Home Visiting Program Evaluation (MIHOPE): Long-Term Follow-Up, Kindergarten data collection (MIHOPE–K) [OMB #0970–0402]

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), in partnership with the Health Resources and Services Administration (HRSA), both of the U.S. Department of Health and Human Services (HHS), is proposing to extend data collection activity as part of the kindergarten phase of the Mother and Infant Home Visiting Program Evaluation Long-Term Follow-Up project (MIHOPE–K). The purpose of MIHOPE–K is to conduct a follow-up study that assesses the long-term impact of the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program when the participating children are in kindergarten. This **Federal Register** notice is seeking to extend data collection for the kindergarten follow-up. The original **Federal Register** notices for the MIHOPE–K data collection were titled under MIHOPE-Long-Term Follow-Up (MIHOPE–LT).

DATES: Comments due December 30, 2021. OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: This request for an extension is to complete the following data collection activities for MIHOPE–K: (1) A survey with the child's primary caregiver (who will be the mother if she is available), (2) direct assessments of child development, (3) surveys with the child's teacher, (4) a direct assessment of the caregiver, (5) videotaped interactions between the caregiver and child, (6) a caregiver website to provide current contact information, (7) state child welfare records, and (8) school records. In addition to collecting these data, the MIHOPE–K project will continue to maintain up-to-date consent forms for the collection of administrative data. Future information collection requests and related **Federal Register** notices will describe future data collection efforts for this project.

Data collected during the kindergarten follow-up study is being used to estimate the effects of MIECHV-funded programs on the following seven domains: (1) Maternal health, (2) child health, (3) child development and school performance, (4) child maltreatment, (5) parenting, (6) crime or domestic violence, and (7) family economic self-sufficiency.

Respondents: The respondents in this extension will include 1,391 families who have not yet participated in the kindergarten follow-up study activities. We have assumed that only 25 percent of respondents will complete the caregiver website. We will also obtain child welfare data from the 11 MIHOPE states and school records data from state and local agencies. We have assumed that we will obtain data from 11 states and 5 local education agencies.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents (total over request period)	No. of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Burden for previously approved, ongoing data collection					
Survey of caregivers	1,391	1	0.99	1,377	689
Direct assessments of children	1,391	1	1.33	1,850	925
Survey of the focal children's teachers	1,391	1	0.5	696	348
Direct assessments of caregivers	1,391	1	0.17	236	118
Videotaped caregiver-child interactions	2,782	1	0.25	696	348
Caregiver website	348	1	0.17	59	30
State child welfare records: data file submission	11	2	15	330	165
School records: data file submission	16	2	22.5	720	360

Estimated Total Annual Burden Hours: 2,983

Authority: Social Security Act Title V 511 [42 U.S.C. 711]. As extended by the Bipartisan Budget Act of 2018 (Pub. L. 115–123) through FY22.

Linda Hitt,

ACF Certifying Officer.

[FR Doc. 2021–26102 Filed 11–26–21; 4:15 pm]

BILLING CODE 4184–74–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of Intent To Issue Replacement Award To Provide Residential Services (Shelter)

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of Replacement Award to Lutheran Social Services of the South Upbring (LSS Upbring).

SUMMARY: ACF, ORR announces the intent to award a Replacement Award to LSS Upbring in the amount of up to $20,929,074 in Brownsville, Texas. On September 17, 2021, Comprehensive Health Services, LLC (CHS) relinquished a federally funded discretionary grant. Per HHS policy, ORR has identified current recipient LSS Upbring to transfer the current permanent capacity to provide shelter for apprehensions of Unaccompanied Children (UC) at the Southwest Border. The continuation of permanent capacity is a prudent step to ensure that ORR is able to meet its responsibility, by law, to provide shelter and appropriate services for UC referred to its care by the Department of Homeland Security. The purpose of this award is to ensure the continuation of residential services for the capacity of 76 shelter beds for UC.

DATES: The proposed period of performance is December 1, 2021–September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Stephen Antkowiak, Office of Refugee Resettlement, Division of Unaccompanied Children Operations, 330 Street SW, Washington, DC 20447. Phone: 202–260–6165. Email: *stephen.antkowiak@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR announces the intent to award a Replacement Award to LSS Upbring in the amount of up to $20,929,074. This award will prevent the disruption in residential services currently available at the CHS Loma Alta location and prevent children unnecessarily pending placement from Border Patrol.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing if applicable, experience, and appropriate level of trained staff to meet those requirements.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of UC from the Commissioner of the former Immigration and Naturalization Service to the Director of ORR within HHS.

(B) The *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the *Flores* Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996); pertinent regulations; and ORR policies and procedures.

Elizabeth Leo,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2021–25970 Filed 11–29–21; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1146]

Real-World Data: Assessing Registries To Support Regulatory Decision-Making for Drug and Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Real-World Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' FDA is issuing this guidance as part of its Real-World Evidence (RWE) Program and to satisfy, in part, the mandate under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to issue guidance about the use of RWE in regulatory decision-making. This guidance provides sponsors and other stakeholders with considerations when either proposing to design a registry or using an existing registry to support regulatory decision-making about a drug's effectiveness or safety.

DATES: Submit either electronic or written comments on the draft guidance by February 28, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1146 for ''Real-World Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993–0002, 301–796–3161, *Dianne.Paraoan@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Real-World Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' FDA is issuing this guidance as part of its RWE Program and to satisfy, in part, the mandate under section 505F of the FD&C Act (21 U.S.C. 355g) to issue guidance about the use of RWE in regulatory decision-making. Topics covered in this guidance include:

- A registry's fitness-for-use for regulatory decision-making, focusing on attributes of a registry that support the collection of relevant and reliable data
- Considerations when linking a registry to another data source, such as data from medical claims, electronic health records, digital health technologies, or another registry
- Considerations for supporting FDA review of submissions, including registry data

Section 3022 of the 21st Century Cures Act (Cures Act) (Pub. L. 114–255) amended the FD&C Act to add section 505F, Utilizing Real World Evidence. This section requires the establishment of a program to evaluate the potential use of RWE to help support the approval of a new indication for a drug approved under section 505(c) of the FD&C Act (21 U.S.C. 355(c)) and to help support or satisfy postapproval study requirements. This section also requires that FDA utilize the program to inform guidance for industry on the circumstances under which sponsors of drugs may rely on RWE and the appropriate standards and methodologies for collection and analysis of RWE submitted to evaluate the potential use of RWE for those purposes. Further, under the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), FDA committed to publishing draft guidance on how RWE can contribute to the assessment of safety and effectiveness in regulatory submissions. FDA is issuing this draft guidance as part of a series of guidance documents to satisfy the Cures Act mandate and the PDUFA VI commitment.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Real-World-Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303. The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130. The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572. The collections of information in 21 CFR parts 310 and 314 have been approved under OMB control number 0910–0230. The collections of information in 21 CFR parts 310, 314, 600, and 803 have been approved under OMB control number 0910–0291. The collections of information in 21 CFR parts 310, 314, 600, and 803 have been approved under OMB control number 0910–0645. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 600 have been approved under OMB control number 0910–0308. The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information in FDA's guidance for industry entitled ''Formal Meetings with Sponsors and Applicants

for PDUFA Products'' have been approved under OMB control number 0910–0429.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: November 23, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26006 Filed 11–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3233]

Request for Nominations for Voting Members on a Public Advisory Committee; Technical Electronic Product Radiation Safety Standards Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) in the Center for Devices and Radiological Health. Nominations will be accepted for current and upcoming vacancies effective January 1, 2022, with this notice. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before January 31, 2022, will be given first consideration for membership on TEPRSSC. Nominations received after January 31, 2022, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be sent electronically by accessing FDA's Advisory Committee Membership Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Akinola Awojope, Office of Management Services, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, email: *Akinola.Awojope@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on TEPRSSC that include five general public representatives and five government representatives.

I. General Description of the Committee's Duties

The committee provides advice and consultation to the Commissioner of Food and Drugs (Commissioner) on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products, and may recommend electronic product radiation safety standards to the Commissioner for consideration.

II. Criteria for Voting Members

The committee consists of a core of 15 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of science or engineering, applicable to electronic product radiation safety. Members will be invited to serve for overlapping terms of up to 4 years. Terms of more than 2 years are contingent upon the renewal of the committee by appropriate action prior to its expiration.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 22, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26002 Filed 11–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–N–0101]

Agency Information Collection Activities; Proposed Collections; Comment Request; Prescription Drug User Fee Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collections of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA's Prescription Drug User Fee program.

DATES: Submit either electronic or written comments on the collection of information by January 31, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 31, 2022. The *https://www.regulations.gov* electronic filing system will accept

comments until 11:59 p.m. Eastern Time at the end of January 31, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2005–N–0101 for ''Agency Information Collection Activities; Proposed Collections; Comment Request; Prescription Drug User Fee Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*
- *Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug User Fee Program

OMB Control Number 0910–0297—Revision

This information collection supports implementation of the Food and Drug Administration Prescription Drug User Fee (PDUFA) program. PDUFA was enacted in 1992 and authorizes FDA to collect fees from companies that produce certain human drug and biological products. Under the prescription drug user fee provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (sections 735 and 736 (21 U.S.C. 379g and 379h)), we have the authority to assess and collect user fees for certain new drug applications (NDAs) and new biologics license applications (BLAs). Under this authority, pharmaceutical companies pay a fee for certain new NDAs and BLAs submitted to FDA for review. We have established a PDUFA page on our website at *https://www.fda.gov/forindustry/userfees/prescriptiondruguserfee/* that includes resources and information regarding PDUFA topics at FDA.

Because the submission of user fees concurrently with applications is required, review of an application by FDA cannot begin until the fee is submitted. To assist respondents in this regard, we developed Form FDA 3397 entitled, ''Prescription Drug User Fee

Cover Sheet.'' Associated instructions may be found on our website at *https://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119184.htm.* The cover sheet (Form FDA 3397) need not be submitted for certain FDA-regulated products, *e.g.,* generic drugs, and Whole Blood and Blood components for transfusion. The list of exempted products is included under the instructions to Form FDA 3397. Relatedly, sections 735 and 736 of the FD&C Act also provide for waiver, reduction, refund, and reconsideration requests. We developed the guidance document entitled ''Guidance for Industry—User Fee Waivers, Reductions, and Refunds for Drug and Biological Products,'' and Form FDA 3971 (Small Business Waivers and Refund Requests), which can be found on our website at *https://www.fda.gov/media/131797/download.*

We are revising the collection to include our current commitment goals, as set forth in the document ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2018 Through 2022,'' also found on our website at *https://www.fda.gov/media/99140/download.* PDUFA is currently authorized through September 30, 2022, with reauthorization activities currently underway. The commitment goals represent the product of FDA's discussions with the regulated industry and public stakeholders, as mandated by Congress. FDA is committed to meeting these goals and to continuous operational improvements associated with PDUFA implementation. The commitment goals provide for the development and issuance of topic-specific guidance. We maintain a searchable guidance database on our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-document.* In publishing the respective notices of availability for each guidance document, we include an analysis under the PRA and invite public comment on the associated information collection recommendations. In addition, all Agency guidance documents are issued in accordance with our Good Guidance Practice regulations in 21 CFR 10.115, which provide for public comment at any time.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Prescription drug user fee activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Sections 735 and 736 of the FD&C Act (PDUFA waivers, not including small business waivers)	112	1.68	189	17	3,213
Section 736(d)(1)(C) of the FD&C Act and Form FDA 3971 (small business waivers)	37	1	37	2	74
Reconsideration Requests	6	1.67	10	24	240
Appeal Requests	1	1	1	12	12
User Fee Cover Sheet Form FDA 3397	174	1	174	0.5 (30 minutes)	87
Total			411		3,626

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of Agency records, we estimate that the number of initial waiver requests submitted annually (excluding small business waiver requests under section 736(d)(1)(C)) of the FD&C Act) will be 189, submitted by 112 different applicants; and that 37 respondents annually will each submit a small business waiver request. We have included in the burden estimate the time for preparation and submission of application fee waivers for small businesses, including completion of Form FDA 3971. Small businesses requesting a waiver must submit documentation to FDA, including the number of their employees, as well as information that the application is the first human drug application, within the meaning of the FD&C Act, to be submitted to the Agency for approval.

We estimate receiving 10 requests for reconsideration annually (including small business waiver reconsiderations), and assume the average burden for preparing and submitting each request is 24 hours. In addition, we estimate receiving 1 request annually for appeal of user fee waiver determination, and assume the time needed to prepare an appeal is 12 hours. We have included in this estimate both the time needed to prepare the request for appeal to the Chief Scientist and User Fee Appeals Officer within the Office of the Commissioner, and the time needed to create and send a copy of the request for an appeal to the Director Division of User Fee Management within the Office of Management at FDA's Center for Drug Evaluation and Research.

We assume 87 hours of burden for completing and submitting Form FDA 3397 (Prescription Drug User Fee Coversheet) for submission of a new drug application or biologics license application.

The information collection reflects an overall increase since our last request for OMB review and approval. We attribute this to expected fluctuations in submissions to the Agency.

Dated: November 19, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26079 Filed 11–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2224]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZEPZELCA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ZEPZELCA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see

SUPPLEMENTARY INFORMATION) are incorrect may submit either electronic or written comments and ask for a redetermination by January 31, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 31, 2022. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 31, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 31, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–2224 for Determination of Regulatory Review Period for Purposes of Patent Extension; ZEPZELCA. Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product ZEPZELCA (lurbinectedin). ZEPZELCA is indicated for the treatment of adult patients with metastatic small cell lung cancer with disease progression on or after platinum-based chemotherapy. This indication is approved under accelerated approval based on overall response rate and duration of response. Continued approval for this indication may be contingent upon verification and description of clinical benefit in a confirmatory trial(s). Subsequent to this approval, the USPTO received a patent term restoration application for ZEPZELCA (U.S. Patent No. 7,763,615) from Pharma Mar, S.A., and the USPTO requested FDA's assistance in

determining this patent's eligibility for patent term restoration. In a letter dated December 14, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ZEPZELCA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZEPZELCA is 4,170 days. Of this time, 3,987 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* January 16, 2009. The applicant claims January 14, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 16, 2009, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the new drug application under section 505 of the Federal Food, Drug, and Cosmetic Act:* December 16, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for ZEPZELCA (NDA 213702) was initially submitted on December 16, 2019.

3. *The date the application was approved:* June 15, 2020. FDA has verified the applicant's claim that NDA 213702 was approved on June 15, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 19, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26009 Filed 11–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Certificate of Origin (CBP Form 3229)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than January 31, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0016 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number 202–325–0056, or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Certificate of Origin.
OMB Number: 1651–0016.
Form Number: CBP Form 3229.
Current Actions: Extension without change.
Type of Review: Extension (without change).
Affected Public: Businesses.
Abstract: CBP Form 3229, Certificate of Origin, is used by shippers and

importers to declare that goods being imported into the United States are grown or the product of an insular possession of the United States and/or produced or manufactured in a U.S. insular possession from material grown in or product of such possession. This form includes a list of the foreign materials in the goods, including their description and value. CBP Form 3229 is used as documentation for goods entitled to enter the U.S. free of duty. This form is authorized by General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and is provided for by 19 CFR part 7.3. CBP Form 3229 is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3229&=Apply.*

Type of Information Collection: Certificate of Origin (CBP Form 3229).

Estimated Number of Respondents: 113.

Estimated Number of Annual Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 2,260.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 753.

Dated: November 23, 2021.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2021–25997 Filed 11–29–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0100]

Petition for Remission or Mitigation of Forfeitures and Penalties Incurred

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than January 31, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0100 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number 202–325–0056, or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

OMB Number: 1651–0100.

Form Number: CBP Form 4609.

Current Actions: Extension without change.

Type of Review: Extension (without change).

Affected Public: Individuals and Businesses.

Abstract: CBP Form 4609, *Petition for Remission of Forfeitures and Penalties Incurred,* is completed, and filed with the CBP FP&F Officer designated in the notice of claim by individuals who have been found to be in violation of one or more provisions of the Tariff Act of 1930, or other laws administered by CBP. Persons who violate the Tariff Act of 1930, or other laws administered by CBP, are entitled to file a petition seeking remission or mitigation of a fine, penalty, or forfeiture incurred under these laws. This petition is submitted on CBP Form 4609. The information provided on this form is used by CBP personnel as a basis for granting relief from forfeiture or penalty. CBP Form 4609 is authorized by 19 U.S.C. 1618 and provided for by 19 CFR 171.1. It is accessible at *https://www.cbp.gov/newsroom/publications/forms?title=4609.*

This collection of information applies to members of the public who may not be familiar with import procedures and CBP regulations. It may also be used by the importing and trade community who are familiar with import procedures and with the CBP regulations.

Type of Information Collection: CBP Form 4609.

Estimated Number of Respondents: 1,610.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,610.

Estimated Time per Response: 14 minutes.

Estimated Total Annual Burden Hours: 376.

Dated: November 23, 2021.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2021–25998 Filed 11–29–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0132]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: AABB Accredited Laboratory Testing; Rapid DNA Prototype Accelerated Nuclear DNA Equipment (ANDE) by NetBio; Rapid DNA Prototype RapidHIT200 by IntegenX

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until January 31, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0132 in the body of the letter, the agency name and Docket ID USCIS–2014–0002. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2014–0002.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2014–0002 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* AABB accredited laboratory testing; Rapid DNA prototype Accelerated Nuclear DNA Equipment (ANDE) by NetBio; Rapid DNA prototype RapidHIT200 by IntegenX.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1294 and G–1295; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS proposes to permit a refugee applicant whose application for refugee status was denied on the basis of lack of credibility to establish a claimed biological relationship to a derivative child to submit DNA evidence with the RFR. This will allow individuals who are otherwise unable to prove the claimed relationship to provide potentially credible evidence of the biological relationship.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the Applicant Initiated AABB accredited lab DNA Testing is 60 and the estimated hour burden per response is 6 hours. The estimated total number of respondents for the Standard DNA Testing is 250 and the estimated hour burden per response is 0.05 hours. The estimated total number of respondents for the Rapid DNA Prototype is 250 and the estimated hour burden per response is 0.05 hours. The estimated total number of respondents for the information collection G–1294 is 250 and the estimated hour burden per response is 0.167 hours. The estimated total number of respondents for the information collection G–1295 is 250 and the estimated hour burden per response is 0.167 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 469 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $14,700.

Dated: November 24, 2021.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–26029 Filed 11–29–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0096]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Genealogy Index Search Request and Genealogy Records Request

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until January 31, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0096 in the body of the letter, the agency name and Docket ID USCIS–2006–0013. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0013.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2006–0013 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Genealogy Index Search Request and Genealogy Records Request.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1041 and G–1041A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Genealogy Program is necessary to provide a timelier response to requests for genealogical and historical records. Form G–1041 is provided as a convenient means for persons to provide data necessary to perform a search of historical agency indices. Form G–1041A provides a convenient means for persons to identify a particular record desired under the Genealogy Program. The forms provide rapid identification of such requests and ensures expeditious handling. Persons such as researchers, historians, and social scientists seeking ancestry information for genealogical, family history and heir location purposes will use Forms G–1041 and G–1041A.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1041 is 3,847 and the estimated hour burden per response is 0.5 hour. The estimated total number of respondents for the information collection G–1041A is 2,920 and the estimated hour burden per response is 0.5 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,384 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $439,855.

Dated: November 24, 2021.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–26031 Filed 11–29–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0082]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application To Replace Permanent Resident Card

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until January 31, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0082 in the body of the letter, the agency name and Docket ID USCIS–2009–0002. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2009–0002.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2009–0002 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Replace Permanent Resident Card.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–90; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–90 is used by USCIS to determine eligibility to replace a Lawful Permanent Resident Card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–90 (paper) is 444,601 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection I–90 (electronic) is 296,400 and the estimated hour burden per response is 1.59 hours; and the estimated total number of respondents for the information collection biometrics is 741,001 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,227,449 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $254,163,343.

Dated: November 24, 2021.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–26030 Filed 11–29–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–67]

30-Day Notice of Proposed Information Collection: CDBG Urban County Qualification/New York Towns Qualification/Requalification Process OMB Control No: 2506–0170

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* December 30, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free

number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 1, 2021 at 86 FR 49044.

A. Overview of Information Collection

Title of Information Collection: CDBG Urban County Qualification/New York Towns Qualification/Requalification Process.

OMB Approval Number: 2506–0170.

Type of Request: Reinstatement with change of a previously approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended (the Act), at sections 102(a)(6) and 102(e) requires that any county seeking qualification as an urban county notify each unit of general local government within the county that such unit may elect to have its population excluded from that of the urban county. Section 102(d) of the Act specifies that the period of qualification will be three years. Based on these statutory provisions, counties seeking qualification or requalification as urban counties under the CDBG program must provide information to HUD every three years identifying the units of general local governments (UGLGs) within the county participating as a part of the county for purposes of receiving CDBG funds. The population of UGLGs for each eligible urban county is used in HUD's allocation of CDBG funds for all entitlement and State CDBG grantees.

New York Towns may qualify as metropolitan cities if they are able to secure the participation of all of the villages located within their boundaries. New York Town that is located in an urban county may choose to leave that urban county when that county is requalifying. New York Town will be required to notify the urban county in advance of its decision to decline participation in the urban county's CDBG program and complete the metropolitan city qualification process.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response *	Annual cost
2506–0170	63	1	63	8	504.00	41.78	$21,057.12
Total	63	1	63	8	504.00	41.78	21,057.12

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) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) 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.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–26013 Filed 11–29–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–66]

30-Day Notice of Proposed Information Collection: Consolidated Plan, Annual Action Plan & Annual Performance Report, OMB Control No: 2506–0117

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* December 30, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 20, 2021 at 86 FR 52172.

A. Overview of Information Collection

Title of Information Collection: Consolidated Plan, Annual Action Plan & Annual Performance Report.

OMB Approval Number: 2506–0117.

Type of Request: Reinstatement with change of a previously approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Departments collection of this information is in compliance with statutory provisions of the Cranston Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions to submit a Comprehensive Housing Affordability Strategy (Section 105(b)); the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104(b)(4) and Section 104(m)); and statutory provisions of these Acts that requires states and localities to submit applications and reports for these formula grant programs. The information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects for informing citizens of intended uses of program funds.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
2506–0117—localities	1,234.00	1.00	1,234.00	305.00	376,370.00	$41.78	$15,724,738.60
2506–0117—States	50.00	1.00	50.00	741.00	37,050.00	41.78	1,547,949.00
Total	1,284.00				413,420.00	41.78	17,272,687.60

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) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) 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.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–26014 Filed 11–29–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7040–N–12]

60-Day Notice of Proposed Information Collection: Receivership, Troubled, Substandard, At-Risk Program; OMB Control No.: 2577–New Collection

AGENCY: Office of Assistant Secretary for Public and Indian Housing, 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:* January 31, 2022.

ADDRESSES: Interest persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Dawn Smith, Office of Policy, Program and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone 202–402–6488. This is not a toll-free number.

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: Receivership, Troubled, Substandard, At-Risk Program.

OMB Control Number: 2577–New.

Type of Request: New collection.

Agency Form Numbers: Narrative, Post-award Reporting, HUD–50075.1

Description of the Need for the Information and Proposed Use: The Transportation, Housing and Urban Development and Related Agencies Appropriations Act of 2021, enacted on December 27, 2020, appropriated fifteen (15) million dollars for emergency grants to improve the asset management condition of housing owned by public housing authorities (PHA) in receivership, troubled, substandard, or at-risk statuses. From this appropriation, HUD has allocated fourteen million and five hundred thousand dollars (14.5) for this funding opportunity. To be eligible for this funding, a PHA must provide a narrative description of the physical needs and condition of the Asset Management Property (AMP), a plan with actions to address the issues at the AMP, and a projection of the impact of those actions on the AMP's performance (physical condition and occupancy). Post-award reporting requires PHAs awarded under this program to use Energy Performance Information Center (EPIC) to complete annual reports within 60 days of each annual anniversary of award. All other reporting (*e.g.*, in financial systems) already required in the Capital Fund formula grant program or the Moving to Work program shall continue to apply.

Respondents: Public Housing Agencies.

Estimated Annual Reporting and Recordkeeping Burden: The estimated burden hours is 540 and the total annual cost is $21,774.

Information collection	Number of respondents	*Avg number of reponses per respondent	Total annual responses	Burden hours per response	Total hours	Hourly cost	Total annual cost
Narrative	100	1	100	6	600	$32.02	$19,212
Post-award Reports	10	1	10	8	80	32.02	2,562
Totals	110	1	110	varies	540	32.02	21,774

* Avg number of responses per respondent = Total Annual Responses ÷ Number of Responses.

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 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.

Laura Miller-Pittman,

Chief, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2021–26076 Filed 11–29–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0084]

Notice of Availability of a Joint Record of Decision (ROD) for the South Fork Wind, LLC Proposed Wind Energy Facility Offshore Rhode Island

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior; National Marine Fisheries Service (NMFS), Commerce.

ACTION: Notice of availability (NOA); record of decision (ROD).

SUMMARY: BOEM announces the availability of the joint ROD on the final environmental impact statement (EIS) for the construction and operations plan (COP) submitted by South Fork Wind, LLC (South Fork Wind). The joint ROD includes the decisions of the Department of the Interior (DOI) and NMFS regarding the South Fork Wind COP. NMFS has adopted the Final EIS to support its decision to issue an incidental take authorization under the Marine Mammal Protection Act. The joint ROD concludes the National Environmental Policy Act (NEPA) process for each agency and is available with associated information on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/south-fork.*

FOR FURTHER INFORMATION CONTACT: For information on the South Fork Wind Offshore Wind Energy Project ROD, please contact: BOEM—Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722, or *michelle.morin@boem.gov;* For information related to NMFS' action, contact Candace Nachman, NOAA Fisheries Office of Policy, (301) 427–8031, *candace.nachman@noaa.gov.*

SUPPLEMENTARY INFORMATION: South Fork Wind seeks approval to construct, operate, maintain, and eventually decommission the Project—a wind energy facility on the Outer Continental Shelf (OCS) offshore Rhode Island and an associated export cable. The Project would be developed within the range of design parameters outlined in the South Fork Wind COP, subject to applicable mitigation measures. The COP for the South Fork Wind Farm (SFWF) proposed the installation of up to 15 wind turbine generators with a nameplate capacity of 6 to 12 megawatts per turbine, submarine cables between the wind turbine generators (inter-array cables), and an offshore substation. The SFWF would be located entirely on the OCS in the area covered by Renewable Energy Lease OCS–A 0517 (Lease Area), approximately 19 miles southeast of Block Island, Rhode Island, and 35 miles east of Montauk Point, New York. The South Fork Export Cable (SFEC) would be an alternating current electric cable that would connect the SFWF to the existing mainland electric grid in East Hampton, New York. The Project also would include an operations and maintenance facility located onshore at either Montauk in East Hampton, New York, or Quonset Point in North Kingstown, Rhode Island, and the SFEC will connect with the Long Island Power Authority electric transmission and distribution system in the town of East Hampton, New York. After carefully considering alternatives described and analyzed in the Final EIS and comments from the public on the Draft EIS, the Department of the Interior has decided to approve the COP for South Fork Wind under the Fisheries Habitat Impact Minimization Alternative, which will allow 12 or fewer turbines and one offshore substation to be installed by South Fork Wind. The full text of the mitigation, monitoring, and reporting requirements, which will be included in BOEM's COP approval, are available in the ROD, which is available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/south-fork.*

NMFS has decided to adopt, in part, BOEM's Final EIS and issue a final Incidental Harassment Authorization (IHA) to South Fork Wind. NMFS' final decision to issue the requested IHA is documented in a separate Decision Memorandum prepared in accordance with internal NMFS policy and procedures. The IHA authorizes the incidental take of marine mammals while prescribing the means of incidental take as well as mitigation and monitoring requirements, including those mandated by the Biological Opinion issued to complete the formal Endangered Species Act Section 7 consultation process. A Notice of

Issuance of the final IHA will be published in the **Federal Register**.

Authority: This Notice of Availability is published in accordance with regulations (40 CFR parts 1500–1508) implementing the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.).*

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2021–26040 Filed 11–29–21; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact for Aquatic Habitat Restoration in the Rio Grande Canalization Project, Sierra and Doña Ana Counties, New Mexico and El Paso County, Texas

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

ACTION: Notice.

SUMMARY: The USIBWC hereby gives notice that the *Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for Aquatic Habitat Restoration in the Rio Grande Canalization Project, Sierra and Doña Ana Counties, New Mexico and El Paso County, Texas* is available.

FOR FURTHER INFORMATION CONTACT: Elizabeth Verdecchia, Natural Resources Specialist, USIBWC, El Paso, Texas 79902. Telephone: (915) 832–4701, Fax: (915) 493–2428, email: *Elizabeth.Verdecchia@ibwc.gov.*

Availability: The electronic version of the Final EA and FONSI is available at the USIBWC web page: *https://www.ibwc.gov/EMD/EIS_EA_Public_Comment.html.*

SUPPLEMENTARY INFORMATION: On June 4, 2009, the USIBWC issued a Record of Decision (ROD) on the long-term management of the Rio Grande Canalization Project (RGCP) in southern New Mexico and western Texas. The ROD committed the USIBWC to the restoration of aquatic and riparian habitat at up to 30 sites over 10 years (through 2019). In May 2019, USIBWC prepared a Draft EA to analyze the potential impact of seven action alternatives and a No Action Alternative to implement aquatic habitat within the RGCP. After extensive public input and subsequent development of preliminary designs, USIBWC re-evaluated alternative sites for aquatic habitat and assessed the feasibility of three additional sites, two of which were added to the EA.

In February 2021, USIBWC prepared an Amended Draft EA, which evaluated the potential impacts on natural, cultural and other resources of ten alternatives, including the No Action Alternative. Restoration actions could include invasive vegetation removal, native vegetation planting, overbank lowering, bank cuts, natural levee breaches, secondary channels, bank destabilization, channel widening, arroyo mouth management, construction of inset floodplains, construction of wetland depressions, and use of supplemental water for on-site irrigation. A Draft Amended FONSI was prepared for five Preferred Alternatives which USIBWC modified from the previous Draft EA based on public input.

The Final five Preferred Alternatives target creation or enhancement of a total of 11.6 acres of aquatic features and 18.8 acres of riparian habitat. They include two simpler sites, Broad Canyon Arroyo, which could be constructed from conceptual designs, and Montoya Intercepting Drain Option A, which would be part of the Sunland Park East Levee construction; two complex sites requiring engineering designs and stakeholder agreements prior construction, Las Cruces Effluent and Mesilla Valley Bosque State Park; and one site to be used as part of compensatory mitigation for future levee construction, Downstream of Courchesne Bridge.

Permits would be required from the United States Army Corps of Engineers for dredge and fill of Waters of the United States, per the Clean Water Act Sections 404 and 401. USIBWC would compensate increased water consumption through a variety of mechanisms, including acquiring water rights, negotiating agreements with the stakeholders, and obtaining appropriate State of New Mexico permits and Department of Justice approvals.

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508), and the USIBWC *Operational Procedures for Implementing Section 102 of NEPA,* published in the **Federal Register** September 2, 1981, potential impacts on natural, cultural, and other resources were evaluated. A Finding of No Significant Impact has been prepared for the Preferred Alternatives based on a review of the facts and analyses contained in the EA. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30 days from the date of this Notice.

Jennifer Pena,

Chief Legal Counsel, International Boundary and Water Commission, United States Section.

[FR Doc. 2021–25889 Filed 11–29–21; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–587]

Distributional Effects of Trade and Trade Policy on U.S. Workers

AGENCY: United States International Trade Commission.

ACTION: Notice of investigation.

SUMMARY: Following receipt on October 14, 2021 of a request from the U.S. Trade Representative (USTR), under section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission (Commission) instituted Investigation No. 332–587, Distributional Effects of Trade and Trade Policy on U.S. Workers, for the purpose of conducting a two-part investigation, with the Commission in part one to provide a public report that catalogues information on the distributional effects on under-represented and under-served communities of trade and trade policy, and with the Commission in part two to expand its research and analysis capabilities so that future probable economic effects advice includes estimates of the potential distributional effects of trade and trade policy, including goods and services imports, on U.S. workers. In preparing its public report, the USTR asked the Commission to gather information through roundtable discussions among representatives of under-represented and under-served communities, and through a symposium focused on academic or similar research on the distributional effects on under-represented and under-served communities of trade and trade policy. The Commission will also hold a public hearing following the roundtables and symposium. The Commission will issue a second notice, to be published in the **Federal Register** by January 31, 2022 that sets out the format and dates for the roundtables, symposium, and hearing,

and how members of the public may participate in them.

DATES:

TBD: Roundtable discussions (notification by separate FRN by January 31, 2022).

TBD: Symposium (notification by separate FRN by January 31, 2022).

TBD: Public Hearing (notification by separate FRN by January 31, 2022).

October 14, 2022: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices are in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Due to the COVID 19 pandemic, the Commission's building is currently closed to the public. Once the building reopens, 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.

FOR FURTHER INFORMATION CONTACT: Co-Project Leader Jennifer Powell (202–205–3450 or *jennifer.powell@usitc.gov*), Co-Project Leader Stephanie Fortune-Taylor (202–205–2749 or *stephanie.fortune-taylor@usitc.gov*), or Deputy Project Leader Sarah Scott (202–708–1397 or *sarah.scott@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*). 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.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background: As requested in the letter received from the U.S. Trade Representative (USTR) on October 14, 2021, the Commission will conduct the investigation in two parts concurrently.

More specifically, the USTR asked the Commission in part one of the investigation to catalogue in a public report information on the distributional effects on under-represented and under-served communities of trade and trade policy. Information for part one will be gathered through (1) roundtable discussions among representatives of under-represented and under-served communities that have been identified in the Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985, January 20, 2021), as well as think tanks, academics and researchers, unions, State and local governments, non-Federal governmental entities, civil society experts, community-based stakeholders, such as minority-owned businesses, business incubators, Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), Tribal Colleges and Universities (TCUs), other minority serving institutions (MSIs), and local and national civil rights organizations; (2) a symposium focused on academic or similar research on the distributional effects on under-represented and under-served communities of trade and trade policy, including results of existing analysis, evaluation of methodologies, the use of public and restricted data in current analysis, identifying gaps in data and/or in the economic literature, and proposed analysis that could be done with restricted data; and (3) a critical review of the economic literature on the distributional effects on under-represented and under-served communities of trade and trade policy including, among other things, the data limitations raised in these analyses. Information regarding the date and format of the roundtables and symposium will be specified in a future notice.

The Commission will publish a notice in the **Federal Register** by January 31, 2022 of the time, place, and procedures to be followed in holding a public hearing, roundtable discussions, and a symposium. As requested by the USTR, the Commission will deliver the report requested on part one of the investigation on October 14, 2022. Since the USTR has indicated that she intends to make this report available to the public in its entirety, the Commission will not include confidential business or national security classified information in its report.

In part two of the investigation, internally the Commission will further develop models that can analyze the potential distributional effects of trade and trade policy, including with respect to goods and services imports, on U.S. workers. The Commission will also seek to identify any data limitations that, if removed, could substantially speed the time to complete the analysis or allow for improved analysis. The USTR asked that the Commission brief USTR staff on its efforts in this regard. The Commission will not prepare or publish a report in connection with part two.

By order of the Commission.

Issued: November 24, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26060 Filed 11–29–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0001]

Agency Information Collection Activities; Proposed eCollection Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) 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 January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

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:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended in 2000, 2005, and 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended in 2000, 2005 and 2013).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as Amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: November 24, 2021.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021–26048 Filed 11–29–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities, Proposed eCollection eComments Requested Extension Without Change, of a Previously Approved Collection, Office of the Victims' Rights Ombudsman, Crime Victims Rights Act Complaint Form

AGENCY: Executive Office for United States Attorneys, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for United States Attorneys, Office of the Victims' Rights Ombudsman, 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 January 31, 2022.

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 Ellen M. FitzGerald, Victims' Rights Ombudsman, Executive Office for United States Attorneys, 950 Pennsylvania Avenue NW, Room 2261, Washington, DC 20005 (phone: 202–252–1010).

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 agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New information collection request.

2. *The Title of the Form/Collection:* Complaint Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* An agency form number is pending. The applicable component within the Department of Justice is the Executive Office for United States Attorneys, Office of the Victims' Rights Ombudsman.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* General public. Information is used to receive and investigate complaints filed by federal crime victims against Department employees who violated or failed to provide the rights established under the Crime Victims Rights Act of 2004, 18 U.S.C. 3771. Respondents are individuals.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will complete each form within approximately 45 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 75 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 24, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–26049 Filed 11–29–21; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1794]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *https://bja.ojp.gov/program/it/global.* Due to ongoing COVID–19 mitigation restrictions, this meeting will be held virtually. Approved observers will receive the log-information prior to the meeting.

DATES: The meeting will take place on Wednesday, December 8, from 3:00 p.m. to 4:30 p.m. ET.

ADDRESSES: The meeting will be held virtually via Zoom for Government. Approved observers will receive the login/sign-in information via email prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Lewis, Global Designated Federal Official (DFO), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone (202) 616–7829 [**Note:** This is not a toll-free number]; Email: *david.p.lewis@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public, however, members of the public who wish to attend this meeting must register with Mr. David P. Lewis at least (1) day in advance of the meeting. [**Note:** This notice was published with shorter lead time that usual due to the difficulty of rescheduling the various participants for a later date. Consequently, to mitigate this, registration will be accepted up until the day before the meeting instead of 7 days in advance as is typically required.] Access to the virtual meeting room will not be allowed without prior authorization. All attendees will be required to virtually sign-in via Zoom before they will be admitted to the virtual meeting.

Anyone requiring special accommodations should notify Mr. Lewis as soon as possible in advance of the meeting.

Purpose: The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Global DFO.

David P. Lewis,

Senior Policy Advisor, Global DFO, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

[FR Doc. 2021–26033 Filed 11–29–21; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Final Finding of No Significant Impact, Gainesville Job Corps Center Proposed Disposal and Reuse of Excess Property

AGENCY: Employment and Training Administration, Department of Labor.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration, pursuant to the Council on Environmental Quality Regulations implementing procedural provisions of the National Environmental Policy Act (NEPA), gives final notice of the proposed disposal of 47.41 acres of excess property and that this project will not have a significant adverse impact on the environment.

DATES: These findings are effective as of November 30, 2021.

ADDRESSES: For further information contact Derrek Sanks, Department of Labor, 200 Constitution Avenue NW, Room N–4460, Washington, DC 20210; Telephone (202) 693–9972 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Derrek Sanks at (202) 693–9972 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), in accordance with 29 CFR 11.11(d), gives final notice of the proposed disposal of 47.41 acres of excess property and that this project will not have a significant adverse impact on the environment. A public notice of availability of the draft environmental assessment (EA) was published in the public facing U.S. Department of Labor website (Announcements | U.S. Department of Labor (*dol.gov*). The review period was for 30 days, ending on August 2, 2021. No public comments were received. No changes to the findings of the EA have been made.

Implementation of the proposed action alternative will not have significant impacts on the human environment. The determination is sustained by the analysis in the EA, agency, and Native American tribal consultation, the inclusion and consideration of public review, and the capability of mitigations to reduce or avoid impacts. Any adverse environmental effects that could occur are no more than minor in intensity, duration and context and less-than-significant. As described in the EA, there are no highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence. There are no previous, planned, or implemented actions, which, in combination with the proposed action alternative, would have significant effects on the human environment. Requirements of NEPA have been satisfied, and preparation of an Environmental Impact Statement is not required.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021–26054 Filed 11–29–21; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to alert the public to an error in the previously published annual Labor Surplus Area (LSA) list for Fiscal Year (FY) 2022, and to announce the corrected LSA list for FY 2022.

DATES: The corrected annual LSA list is effective October 1, 2021, for all states, the District of Columbia, and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Samuel Wright, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4514, Washington, DC 20210. Telephone: (202) 693–2870 (This is not a toll-free number) or email *wright.samuel.e@dol.gov.*

SUPPLEMENTARY INFORMATION: The previously published FY 2022 LSA list contained more areas than it should have, due to an error caused by a miscalculation of the two-year unemployment rate average. The correct two-year unemployment rate average is rounded to 5.86 percent and the correct LSA unemployment rate is rounded to 7.03 percent.

The Department of Labor's (DOL's) regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subpart A. These regulations require the Employment and Training Administration (ETA) to classify jurisdictions as LSAs pursuant to the criteria specified in the regulations, and to publish annually a list of LSAs. Pursuant to those regulations, ETA is hereby publishing the annual LSA list.

In addition, the regulations provide exceptional circumstance criteria for classifying LSAs when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Eligible Labor Surplus Areas

An LSA is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period. ETA uses only official unemployment estimates provided by the Bureau of Labor Statistics in making these classifications. The average unemployment rate for all states includes data for the Commonwealth of Puerto Rico. The LSA classification criteria stipulate a civil jurisdiction must have a ''floor unemployment rate'' of 6 percent or higher to be classified as an LSA. Any civil jurisdiction that has a ''ceiling unemployment rate'' of 10 percent or higher is classified as an LSA.

Civil jurisdictions are defined as follows:

1. A city of at least 25,000 population on the basis of the most recently available estimates from the Bureau of the Census; or

2. A town or township in the States of Michigan, New Jersey, New York, or Pennsylvania of 25,000 or more population and which possess powers and functions similar to those of cities; or

3. All counties, except for those counties which contain any type of civil jurisdictions defined in ''1'' or ''2'' above; or

4. A ''balance of county'' consisting of a county less any component cities and townships identified in ''1'' or ''2'' above; or

5. A county equivalent which is a town in the States of Connecticut, Massachusetts, and Rhode Island, or a municipio in the Commonwealth of Puerto Rico.

Procedures for Classifying Labor Surplus Areas

The DOL issues the LSA list on a fiscal year basis. The list becomes effective each October 1, and remains in effect through the following September 30. The reference period used in preparing the current list was January 2019 through December 2020. The national average unemployment rate (including Puerto Rico) during this period is rounded to 5.86 percent. Twenty percent higher than the national unemployment rate during this period is rounded to 7.03 percent. Therefore, a civil jurisdiction must have a two-year unemployment rate of 7.03 percent or higher in order to be classified an LSA. To ensure that all areas classified as labor surplus meet the requirements, when a city is part of a county and meets the unemployment qualifier as an LSA, that city is identified in the LSA list, the balance of county, not the entire county, will be identified as an LSA if the balance of county also meets the LSA unemployment criteria. The data on the current and previous years' LSAs are available at *www.dol.gov/agencies/eta/lsa.*

Petition for Exceptional Circumstance Consideration

The classification procedures also provide criteria for the designation of LSAs under exceptional circumstances criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not reflected in the data for the two-year reference period. Under the program's exceptional circumstance procedures, LSA classifications can be made for civil jurisdictions, Metropolitan Statistical Areas or Combined Statistical Areas, as defined by the U.S. Office of Management and Budget. In order for an area to be classified as an LSA under the exceptional circumstance criteria, the state workforce agency must submit a petition requesting such classification to DOL's ETA. The current criteria for an exceptional circumstance classification are:

1. An area's unemployment rate is at least 7.03 percent for each of the three most recent months; and

2. A projected unemployment rate of at least 7.03 percent for each of the next 12 months because of an event.

When submitting such a petition, the state workforce agency must provide documentation that the exceptional circumstance event has occurred. The state workforce agency may file petitions on behalf of civil jurisdictions, Metropolitan Statistical Areas, or Micropolitan Statistical Areas.

State Workforce Agencies may submit petitions in electronic format to *wright.samuel.e@dol.gov,* or in hard copy to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW, Room C–4514, Washington, DC 20210, Attention Samuel Wright. Data collection for the petition is approved under OMB 1205–0207, expiration date May 31, 2023.

Signed at Washington, DC.

Angela Hanks,

Acting Assistant Secretary for Employment and Training Administration.

[FR Doc. 2021–26055 Filed 11–29–21; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Alaska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program that has occurred since the publication of the last notice regarding the State's EB status:

• Based on the data released by the Bureau of Labor Statistics on November 19, 2021, the seasonally-adjusted Total Unemployment Rate (TUR) for Alaska fell below the 6.5% threshold necessary to remain ''on'' in EB. Therefore the payable period in EB for Alaska will end on December 11, 2021.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing a claim for EB of the forthcoming end of the EB period and its effect on the individual's rights to EB (20 CFR 615.13(c)(4)).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021–26056 Filed 11–29–21; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ventilation Plans, Tests, and Examinations in Underground Coal Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 30, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under Section 101(a) of the Federal Mine Safety and Health Act of 1977 (the Mine Act), the Secretary may by rule in accordance with procedures set forth in this section and in accordance with section 553 of Title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. In addition, Section 303 requires that all coal mines be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment be examined daily and a record be kept of such examination.

Underground coal mines usually present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and explosions.

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and noxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air must be provided to maintain the level of respirable dust at or below 2 milligrams per cubic meter of air and air quality must be maintained in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. Ground conditions are subject to frequent changes, thus sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination, reporting and recordkeeping requirements of §§ 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically caused numerous fatalities if not properly maintained and operated. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 21, 2021 (86 FR 38502).

This information collection is subject to the PRA. A Federal agency generally

cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Control Number: 1219–0088.

Affected Public: Private Sector: Businesses or other for-profit institutions.

Total Estimated Number of Respondents: 153.

Total Estimated Number of Responses: 10,926.

Total Estimated Annual Time Burden: 115,874 hours.

Total Estimated Annual Other Costs Burden: $128,046.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 23, 2021.

Nora Hernandez,

Department Clearance Officer.

[FR Doc. 2021–26053 Filed 11–29–21; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''BLS Data Sharing Program.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 31, 2022.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7628 (this is not a toll-free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

An important aspect of the mission of the BLS is to disseminate to the public the maximum amount of information possible. Not all data are publicly available because of the importance of maintaining the confidentiality of BLS data. However, the BLS has opportunities available on a limited basis for eligible researchers to access confidential data for purposes of conducting valid statistical analyses that further the mission of the BLS as permitted in the Confidential Information Protection and Statistical Efficiency Act (CIPSEA).

The BLS makes confidential data available to eligible researchers through three major programs:

1. The Census of Fatal Occupational Injuries (CFOI), as part of the BLS occupational safety and health statistics program, compiles a count of all fatal work injuries occurring in the U.S. in each calendar year. Multiple sources are used in order to provide as complete and accurate information concerning workplace fatalities as possible. A research file containing CFOI data is made available offsite to eligible researchers.

2. The National Longitudinal Surveys of Youth (NLSY) is designed to document the transition from school to work and into adulthood. The NLSY collects extensive information about youths' labor market behavior and educational experiences over time. The NLSY includes three different cohorts: The National Longitudinal Survey of Youth 1979 (NLSY79), the NLSY79 Young Adult Survey, and the National Longitudinal Survey of Youth 1997 (NLSY97). NLSY data beyond the public use data are made available in greater detail through an offsite program to eligible researchers.

3. The BLS makes available data from several employment, compensation, prices, and working conditions surveys to eligible researchers for onsite use. Eligible visiting researchers can access these data in researcher rooms at the BLS national office in Washington, DC or at a Federal Statistical Research Data Center (FSRDC).

II. Current Action

Office of Management and Budget clearance is being sought for the BLS Data Sharing Program. In order to provide access to confidential data, the BLS must determine that the researcher's project will be exclusively statistical in nature and that the researcher is eligible based on guidelines set out in CIPSEA, the Office of Management and Budget (OMB) implementation guidance on CIPSEA, and BLS policy. This information collection provides the vehicle through which the BLS will obtain the necessary details to ensure all researchers and projects comply with appropriate laws and policies.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Title of Collection: BLS Data Sharing Program.

OMB Number: 1220–0180.

Type of Review: Extension. *Affected Public:* Individuals.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden hours
NLSY Application	126	On occasion ...	126	30	63
Visiting Researcher & CFOI Application	35	On occasion ...	35	30	17.5
Totals	161	.....	161	.....	80.5

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on November 22, 2021.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2021–25983 Filed 11–29–21; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2021–0010]

Federal Advisory Council on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: The Secretary of Labor (Secretary) invites interested parties to submit nominations for individuals to serve on the Federal Advisory Council on Occupational Safety and Health (FACOSH). OSHA is extending the deadline for nominations to serve on FACOSH from November 22, 2021 to January 31, 2022.

DATES: Nominations for individuals to serve on the Council must be submitted electronically by January 31, 2022.

ADDRESSES: People interested in being nominated for the Council are encouraged to review the **Federal Register** notice on nominations for membership published on October 22, 2021 (86 FR 58693) and submit the requested information by January 31, 2022. Nominations may be submitted, including attachments, by the following method:

Electronically: You may submit nominations, including attachments, electronically into Docket No. OSHA–2021–0010 at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2021–0010). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General information: Mr. Francis Yebesi, Director, OSHA Office of Federal Agency Programs; telephone (202) 693–2122; email *ofap@dol.gov.*

Copies of this ***Federal Register*** *document:* Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information are also available on the OSHA web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: On September 30, 2021, President Joseph Biden signed Executive Order (E.O.) 14048 continuing or reestablishing certain federal advisory committees, including FACOSH, until September 30, 2023 (86 FR 55465 (10/05/2021)). In response, the Secretary reestablished FACOSH and the Department of Labor (DOL) filed the FACOSH charter on October 14, 2021. FACOSH will terminate on September 30, 2023, unless continued by the President. The FACOSH charter is available to read or download at *https://www.osha.gov.* In addition, the Secretary invites interested persons to submit nominations for membership on FACOSH. FACOSH is authorized to advise the Secretary on all matters relating to the occupational safety and health of federal employees (5 U.S.C. 7902; 29 U.S.C. 668, Executive Order 12196, as amended). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce, and how to encourage the establishment and maintenance of effective occupational safety and health programs in each federal agency.

Notice of solicitation for nominations to serve on FACOSH was also published on October 22, 2021. The deadline for submission of nominations was 30 days from the date of publication, or November 22, 2021. The Secretary now extends the deadline for nomination to January 31, 2022.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice pursuant to 5 U.S.C. 7902; 5 U.S.C. App. 2; 29 U.S.C. 668; E.O. 12196 (45 FR 12629 (2/27/1980)), as amended; 41 CFR part 102–3; and Secretary of Labor's Order 08–2020 (85 FR 58393).

Signed at Washington, DC, on November 23, 2021.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–25981 Filed 11–29–21; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Pro Bono Innovation Fund Request for Pre-Applications for 2022 Grant Funding

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the conditions for submitting

a Pre-Application for 2022 Pro Bono Innovation Fund grants.

DATES: Pre-Applications must be submitted by 11:59 p.m. EST on Friday, January 21, 2022.

ADDRESSES: Pre-Applications must be submitted electronically via LSC's unified grants management system, GrantEase.

FOR FURTHER INFORMATION CONTACT: Caroline Shriver, Grants Program Coordinator, Office of Program Performance, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 302–4335; or probonoinnovation@*lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Since 2014, Congress has provided an annual appropriation to LSC ''for a Pro Bono Innovation Fund.'' *See, e.g.,* Consolidated Appropriations Act, 2017, Public Law 115–31, 131 Stat. 135 (2017). LSC requested these funds for grants to ''develop, test, and replicate innovative pro bono efforts that can enable LSC grantees to expand clients' access to high quality legal assistance.'' LSC Budget Request, Fiscal Year 2014 at 26 (2013). The grants must involve innovations that are either ''new ideas'' or ''new applications of existing best practices.'' *Id.* Each grant would ''either serve as a model for other legal services providers to follow or effectively replicate a prior innovation. *Id.* The Senate Appropriations Committee explained that these funds ''will support innovative projects that promote and enhance pro bono initiatives throughout the Nation,'' and the House Appropriations Committee directed LSC ''to increase the involvement of private attorneys in the delivery of legal services to [LSC-eligible] clients.'' S. Rep. 114–239 at 123 (2016), House Rep. 113–448 at 85 (2014).

Since its inception, the Pro Bono Innovation Fund has advanced LSC's goal of increasing the quantity and quality of legal services by funding projects that more efficiently and effectively involve pro bono volunteers in serving the critical unmet legal needs of LSC-eligible clients. In 2017, LSC built on these successes by creating three funding categories to better focus on innovations serving unmet and well-defined client needs (Project Grants), on building comprehensive and effective pro bono programs through new applications of existing best practices (Transformation Grants), and on providing continued development support for the most promising innovations (Sustainability Grants). In 2021, LSC created a second track for Project Grants to address grantees' desire to develop and implement innovative solutions to pro bono challenges that are beyond direct legal services.

II. Funding Opportunities Information

A. Eligible Applicants

To be eligible for the Pro Bono Innovation Fund's Project, Sustainability, and Transformation grants, Applicants must be current grantees of LSC Basic Field-General, Basic Field-Migrant, or Basic Field-Native American grants. In addition, Sustainability Grant Applicants must also be a current Pro Bono Innovation Fund grantee with a 2019 or 2020 grant award.

B. Pro Bono Innovation Fund Purpose and Key Goals

Pro Bono Innovation Fund grants develop, test, and replicate innovative pro bono efforts that can enable LSC grantees to use pro bono volunteers to serve larger numbers of low-income clients and improve the quality and effectiveness of the services provided. The key goals of the Pro Bono Innovation Fund are to:

1. Address gaps in the delivery of legal services to low-income people;
2. Engage more lawyers and other volunteers in pro bono service;
3. Develop, test, and replicate innovative pro bono efforts.

C. Funding Categories

1. Project Grants

The goal of Pro Bono Innovation Fund Project Grants is to leverage volunteers to meet a critical, unmet and well-defined client need. Consistent with the key goals of the Pro Bono Innovation Fund, applicants are encouraged to focus on engaging volunteers to increase free civil legal aid for low-income Americans by proposing new, replicable ideas. The Pro Bono Innovation Fund has two Project Grant types, Direct Service and Non-Direct Service. Direct Service projects are focused on engaging volunteers to increase free legal assistance for eligible clients. Non-Direct service projects propose to strengthen core aspects of pro bono delivery systems and may not result in direct pro bono client services within the grant timeframe (*i.e.,* develop suite of substantive training materials, create on-demand videos for volunteers, etc.).

Applicants are strongly encouraged to research prior Pro Bono Innovation Fund projects to replicate and improve upon them. LSC is particularly interested in applications that propose to replicate projects LSC has previously funded with Sustainability Grants. Project Grants can be either 18 or 24 months.

2. Transformation Grants

The goal of Pro Bono Innovation Fund Transformation Grants is to support LSC grantees in comprehensive assessment and restructuring of pro bono programs through new applications of existing best practices in pro bono delivery. Each Transformation Grant will support a rigorous assessment of an LSC grantee's pro bono program and the identification of best practices in pro bono delivery that are best suited to that grantee's needs and circumstances. Transformation Grants are targeted towards LSC grantees whose leadership is committed to restructuring an entire pro bono program and incorporating pro bono best practices into core, high-priority client services with an urgency to create a high-impact pro bono program. This funding opportunity is open to all LSC grantees but is primarily intended for LSC grantees who have been unsuccessful applying for Project Grants or who have never applied for a Pro Bono Innovation Fund grant in the past. Transformation Grants can be either 24 or 36 months.

3. Sustainability Grants

Pro Bono Innovation Fund Sustainability Grants are available to current Pro Bono Innovation Fund grantees who received a 2019 or 2020 Project grant. The goal of Sustainability Grants is to support further development of the most promising and replicable Pro Bono Innovation Fund projects with an additional 24 months of funding so grantees can leverage new sources of revenue for the project and collect meaningful data to demonstrate the project's results and outcomes for clients and volunteers. Applicants for Sustainability Grants will be asked to propose an ambitious strategy that reduces the Pro Bono Innovation Fund contribution to the project over the Sustainability Grant term. Sustainability Grants are for 24 months.

D. Available Funds and Additional Consideration for 2022 Grants

The availability of funds for Pro Bono Innovation Fund Grants for FY2022 depends on LSC's final appropriation amount. LSC currently is operating under a Continuing Resolution for FY2022, which funds the Federal government through December 3, 2021. The Continuing Resolution maintains Pro Bono Innovation Fund at the FY2021 level of $4,750,000. LSC anticipates publicizing the total amount available for Pro Bono Innovation Fund

Grants when Congress enacts the FY2022 appropriation. Pro Bono Innovation Fund Grant decisions for FY2022 will be made in the summer of 2022.

LSC will not designate fixed or estimated amounts for the three different funding categories and will make grant awards for the three categories within the total amount of funding available.

E. Grant Terms

Pro Bono Innovation Fund awards can have grant terms of 18, 24, or 36 months, depending on the category of grant.

	18 months	24 months	36 months
Project Grants	√	√	X
Transformation Grants	X	√	√
Sustainability Grants	X	√	X

Applicants for Project Grants can apply for either an 18- or a 24-month grant. Applicants for Transformation Grants can apply for either a 24- or a 36-month grant. Applicants for Sustainability Grants can apply for a 24-month grant only. Applications must cover the full proposed grant term. The grant term is expected to commence on October 1, 2022.

III. Grant Application Process

A. Pro Bono Innovation Fund Grant Application Process

This year, the Pro Bono Innovation Fund application process will be administered in LSC's unified grants management system, GrantEase. Applicants must first submit a Pre-Application to LSC in GrantEase by January 21, 2022 to be considered for a grant. After review by LSC staff, LSC's President decides which applicants will be asked to submit a full application. Applicants will be notified of approval to submit a full application by early March, 2022. Full applications are due to LSC in the GrantEase system on May 9, 2022. Once received, full applications will undergo a rigorous review by LSC staff and other subject matter experts. LSC's President makes the final decision on funding for the Pro Bono Innovation Fund.

B. Late or Incomplete Applications

LSC may consider a request to submit a Pre-Application after the deadline, but only if the Applicant has submitted an email to *probonoinnovation@lsc.gov* explaining the circumstances that caused the delay prior to the Pre-Application deadline. Communication with LSC staff, including assigned Program Liaisons, is not a substitute for sending a formal request and explanation to *probonoinnovation@lsc.gov.* At its discretion, LSC may consider incomplete applications. LSC will determine the admissibility of late or incomplete applications on a case-by-case basis.

C. Multiple Pre-Applications

Applicants may submit multiple Pre-applications under the same or different funding category. If applying for multiple grants, applicants should submit separate Pre-applications for each funding request.

D. Additional Information and Guidelines

Additional guidance and instructions on the Pro Bono Innovation Fund Pre-Application and Application processes, will be available and regularly updated at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/pro-bono-innovation-fund.*

Dated: November 24, 2021.

Jessica Lynne Wechter,

Special Assistant to the President.

[FR Doc. 2021–26028 Filed 11–29–21; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Museum Assessment Program Application Forms

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice; request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the three-year approval of the forms necessary to support the implementation of the Museum Assessment Program (MAP). They are designed to collect information to support both applications to the program by museums and post-program evaluations. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 28, 2022.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Mark Isaksen, Supervisory Grants Management Specialist, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Mr. Isaksen can be reached by telephone at 202–653–4667, or by email at *misaksen@imls.gov.*

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comment that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of Federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The Museum Assessment Program (MAP) offers museums an opportunity to strengthen operations and plan for the future through a process of self-assessment, institutional activities, and consultative peer review. MAP is supported through a cooperative agreement between IMLS and the American Alliance of Museums. Program participants choose from among five assessments: Organizational, Collections Stewardship, Education and Interpretation, Community and Audience Engagement, and Board Leadership. Those who complete the assessment receive a report with prioritized recommendations reflecting the assessment type chosen. The forms submitted for public review will include the MAP Application, the MAP Follow-Up Visit Request Form, and seven online evaluations addressing specific aspects of the assessment process, the materials used, the individual(s) serving as peer reviewers, and the impact one year after the assessment's conclusion.

Agency: Institute of Museum and Library Services.

Title: Museum Assessment Program Application Forms.

OMB Control Number: 3137–0101.

Agency Number: 3137.

Respondents/Affected Public: Museum staff.

Total Estimated Number of Annual Respondents: 125.

Frequency of Response: Once per request.

Average Minutes per Response: 420 minutes.

Total Estimated Number of Annual Burden Hours: 875.

Cost Burden (dollars): TBD.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: November 23, 2021.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2021–25967 Filed 11–29–21; 8:45 am]

BILLING CODE 7036–01–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Submission for Review: Financial Disclosure Form (SF–714)

AGENCY: Office of the Director of National Intelligence.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Personnel Security Group, Special Security Directorate, National Counterintelligence and Security Center, Office of the Director of National Intelligence (ODNI) offers the general public and other federal agencies the opportunity to comment on an existing information collection request (ICR) SF–714. This request for comment is premised on an extension of the expiration date of the current SF–714 for an additional three years; no changes have been made to the existing form.

DATES: Comments are encouraged and will be accepted until January 31, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Mr. Gregory Koch, Director, Information Management Office, Chief Operating Officer, ODNI, Washington, DC 20511, Attention: Financial Disclosure Form, Personnel Security Group, Special Security Directorate, National Counterintelligence and Security Center.

SUPPLEMENTARY INFORMATION: In December 2011, the ODNI accepted responsibility from the Information Security Oversight Office (ISOO) to manage the continuation in existence of Standard Form 714: Financial Disclosure Report, in accordance with the responsibilities assigned to the Director of National Intelligence as Security Executive Agent. Pursuant to the responsibilities assigned to the Director of National Intelligence as the Security Executive Agent under E.O. 13467 and the National Security Act (50 U.S.C. 3162a), the SF–714 collects information that is used to assist in making determinations regarding access to specifically designated types of classified information as specified in Section 1.3(c) of E.O. 12968. The data may also be used as a part of a review process to evaluate eligibility or continued eligibility for access to classified information or as evidence in legal proceedings. Information obtained from the SF–714 may also be used to help law enforcement and counterintelligence professionals gather pertinent information in the preliminary stages of potential espionage and/or counterterrorism cases.

As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), ODNI is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

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: Personnel Security Group, Special Security Directorate, the National Counterintelligence and Security Center, Office of the Director of National Intelligence.

Title: Financial Disclosure Report.

OMB Number: 3095–0058.

Agency Form Number: SF–714.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 86,000.

Estimated Time per Respondent: 120 minutes.

Total Burden Hours: 172,000 annually.

Office of the Director of National Intelligence.

Dated: November 24, 2021.

Gregory Koch,

Director, Information Management Office.

[FR Doc. 2021–26120 Filed 11–29–21; 8:45 am]

BILLING CODE 9500–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324; NRC–2021–0216]

Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) is issuing an exemption in response to a request from Duke Energy Progress, LLC (Duke Energy, the facility licensee), on behalf of an individual named in the request, dated July 29, 2021, as supplemented by letters dated August 26, 2021 and October 25, 2021. The exemption permits a waiver of examination and test requirements for that individual to be supported by extensive actual operating experience at a comparable facility that occurred greater than 2 years before the date of application, as opposed to the regulatory requirement that this experience be within 2 years. The exemption is effective upon issuance, but only applies to the specifically named individual.

DATES: The exemption was issued on November 23, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0216 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–2021–0216. 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, 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:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrew Hon, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8480; email: *Andrew.Hon@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Duke Energy is the holder of Renewed Facility Operating License Nos. DPR–71 and DPR–62, which authorize the operation of Brunswick Steam Electric Plant, Units 1 and 2 (BSEP). BSEP consists of two boiling-water reactors located in Brunswick County, North Carolina. The licenses are subject to the rules, regulations, and orders of the NRC.

II. Request/Action

Part 55 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Operators' Licenses,'' specifies the procedures and criteria for the issuance of licenses to operators and senior operators of utilization facilities licensed under the Atomic Energy Act of 1954, as amended, or Section 202 of the Energy Reorganization Act of 1974, as amended, and 10 CFR part 50, Part 52, or Part 54. Pursuant to 10 CFR 55.11, ''Specific exemptions,'' the Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 55 as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest.

The specific requirements for written examinations and operating tests for senior operator candidates are described in 10 CFR 55.43, ''Written examination: Senior operators,'' and 10 CFR 55.45, ''Operating tests,'' respectively. Additionally, 10 CFR 55.47, ''Waiver of examination and test requirements,'' provides the criteria under which the Commission may waive any or all of the requirements for a written examination and operating test, upon application by a facility licensee. One criterion is that the Commission must find that the applicant ''[h]as had extensive actual operating experience at a comparable facility, as determined by the Commission, within two years before the date of application . . . .''

By letter dated July 29, 2021 (ADAMS Accession No. ML21211A003), as supplemented by letters dated August 26, 2021 and October 25, 2021 (ADAMS Accession Nos. ML21238A332 and ML21298A166, respectively), the facility licensee requested a one-time exemption from a specific requirement in 10 CFR 55.47 on behalf of an individual who had previously been licensed as a senior operator at BSEP. The facility licensee stated that the application for this individual to be licensed a second time as a senior operator at BSEP was submitted approximately 2 years and 1 month since the individual had last been licensed at BSEP. Since 10 CFR 55.47 requires extensive actual operating experience within the 2 years before the date of application, the facility licensee requested a one-time exemption from this 2-year limit for the individual.

III. Discussion

Pursuant to 10 CFR 55.11, the Commission may, upon application by an interested person, or upon its own initiative, grant exemptions from the requirements of 10 CFR part 55 as it determines (1) are authorized by law, (2) will not endanger life or property, and (3) are otherwise in the public interest.

The Exemption Is Authorized by Law

Exemptions are authorized by law where they are not expressly prohibited by statute or regulation. A proposed exemption is implicitly authorized by law if it will not endanger life or property and is otherwise in the public interest and no other provisions in law prohibit, or otherwise restrict, its application. The NRC has reviewed the exemption request and finds that granting the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Accordingly, the NRC finds that the exemption is authorized by law.

The Exemption Will Not Endanger Life or Property

Pursuant to 10 CFR 55.33(a)(2), the Commission will approve an initial application for a senior operator license if it finds, in part, that the applicant has passed the requisite written examination and operating test in accordance with 10 CFR 55.43 and 55.45. The written examination and operating test determine whether the applicant has learned to operate a facility, and to direct the licensed activities of licensed operators at the facility, competently and safely. The regulations in 10 CFR 55.47 allow for, instead, a waiver of the written examination and operating test if the Commission finds that the applicant:

(1) Has had extensive actual operating experience at a comparable facility, as determined by the Commission, within two years before the date of application;

(2) Has discharged his or her responsibilities competently and safely and is capable of continuing to do so; and

(3) Has learned the operating procedures for and is qualified to operate competently and safely the facility designated in the application.

Regarding the application of the 10 CFR 55.47 criteria to the specifically named individual (whose name is redacted and replaced with ''[[ ]]''), the facility licensee stated the following:

Mr. [[ ]] discharged his responsibilities competently and safely during his nearly 6 years and 5 months as a licensed operator at BSEP. Mr. [[ ]] was issued License No. OP–21982 for BSEP, Units 1 and 2, effective January 17, 2013. Subsequently, the license was upgraded to SRO [senior operator] License No. SOP–501215, effective September 20, 2017. Mr. [[ ]] voluntarily resigned and his SOP License was terminated on June 13, 2019, when he left the company. Along with his duties as a Control Room supervisor, Mr. [[ ]] served as an instructor for the Brunswick Initial License Training Program with a focus on Abnormal and Emergency Procedure training in the simulator until his departure in June 2019.

. . . Since returning to BSEP on June 7, 2021, Mr. [[ ]] has completed a training process of self-study and one-on-one instruction, which included the licensed operator requalification material for all training segments since his June 2019 departure. Mr. [[ ]] then commenced attending licensed operator requalification training in July 2021 and will continue in this training program.

As part of this additional training, Mr. [[ ]] spent a total of 168 hours on shift during June and July 2021 as follows:

(1) 36 hours as a non-licensed operator under the direction of the qualified on-duty operators performing plant walk downs and refamiliarization tours;

(2) 36 hours of shift functions under the direction of a Reactor Operator in the position of Reactor Operator;

(3) 48 hours of shift functions under the direction of a Senior Reactor Operator in the position of Control Room Supervisor; and

(4) 48 hours of Work Control Center functions under direction of a Senior Reactor Operator.

At the completion of this additional training and on-shift time, Mr. [[ ]] took and passed the annual licensed operator requalification written, simulator operating, and Job Performance Measure exams administered on July 7, 2021.

In accordance with 10 CFR 55.47(b) and (c), an authorized representative of the facility licensee certified that the specifically named individual's past performance and current qualifications meet the criteria of 10 CFR 55.47(a). Specifically, the facility licensee certified that the individual discharged his responsibilities competently and safely and is capable of continuing to do so. The facility licensee also certified that the individual has learned the operating procedures for and is qualified to operate competently and safely the facilities at BSEP. The certification included a description of the individual's operating experience. Specifically, the individual received a license as an operator of BSEP, Units 1 and 2 from January 2013, until upgrading the license to that of a senior operator in September 2017. While at BSEP, the individual operated the controls of the facilities, performed extensive licensed operator duties, and had responsibilities commensurate with a licensed operator. The individual's license was terminated in June 2019. The NRC received an application for the individual to reinstate his license on July 29, 2021, approximately 1 month beyond the 2-year waiver limit of 10 CFR 55.47(a)(1). Since returning to BSEP, the individual completed self-study, one-on-one instruction, requalification examinations, and 168 hours on-shift under the direction of on-duty operators. The individual will continue training and examinations in the requalification program.

Based on the above, the NRC determined that the individual's knowledge and abilities associated with the operation of BSEP demonstrate, consistent with 10 CFR 55.47, that the individual has learned to operate the facility, and to direct the licensed activities of licensed operators at the facility, competently and safely, notwithstanding the fact that their extensive actual operating experience at the facility occurred approximately 1 month beyond the 2-year waiver limit of 10 CFR 55.47(a)(1). Accordingly, the NRC finds that the exemption will not endanger life or property.

The Exemption Is Otherwise in the Public Interest

The granting of the requested exemption is otherwise in the public interest because it is a part of the facility licensee's ongoing effort, consistent with the NRC's regulations, to avoid excessive use of overtime by its licensed operators. The facility licensee stated that it expected to need fatigue rule waivers of one or more work hour controls, per 10 CFR 26.207, ''Waivers and exceptions,'' to maintain licensed operator shift staffing. Worker fatigue at BSEP and in the nuclear industry is a safety concern to the NRC and prompted the Commission to amend 10 CFR part 26 in March 2008, to include new requirements for facility licensees to establish written policies for the management of fatigue for all individuals who are subject to a facility licensee's fitness-for-duty program, including licensed operators. Accordingly, 10 CFR 26.207(a)(2) states, ''To the extent practicable, licensees shall rely on the granting of waivers only to address circumstances that could not have been reasonably controlled. . . .'' The facility licensee stated that all off-shift individuals with operator licenses, both within operations staff and other departments, are now reactivated and supporting shift overtime coverage and, to the full extent possible, individuals with operator licenses have been wholly rededicated to shift coverage. Furthermore, the facility licensee has initiated a licensed operator class that is relatively large (*i.e.,* 30 candidates) with a currently scheduled licensing date in February 2023. Nonetheless, the facility licensee stated that fatigue rule waivers would still be needed before this date. The facility licensee further stated that BSEP has already begun experiencing temporary periods below the requirements of the Brunswick On-Shift Staffing Analysis due to illness and that the majority of the BSEP licensed operators are at their fatigue rule limits through the end of 2021 without all future coverage yet filled.

The granting of the requested exemption would allow the re-licensing of the specifically named individual, which would alleviate the BSEP licensed operator staffing challenge over approximately 200 shifts through February 2023, the coverage of which would otherwise require additional overtime and possibly fatigue rule waivers. Therefore, delaying the individual's opportunity to be re-licensed until the next examination date would not be in the public interest, and the cost of preparing, approving, and

administering a special licensing examination before that date for the individual would be substantial for both the facility licensee and the NRC, without a commensurate benefit to life or property, as determined above.

Based on the above, the NRC finds that the exemption is otherwise in the public interest.

Environmental Considerations

The NRC's approval of the exemption is categorically excluded under 10 CFR 51.22(c)(25) and there are no special circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that approval of the exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, nor does it change any of the assumptions or limits used in the facility licensee's safety analyses or introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because the exemption does not affect any effluent release limits as provided in the facility licensee's technical specifications or by the regulations in 10 CFR part 20, ''Standards for Protection Against Radiation.'' There is no significant increase in individual or cumulative public or occupational radiation exposure because the exemption does not affect limits on the release of any radioactive material, or the limits provided in 10 CFR part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because the exemption does not involve any construction activities or changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the facility licensee's safety analysis. In addition, the NRC determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no special circumstances present that would preclude reliance on this categorical exclusion. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the exemption.

IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, the exemption is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, effective immediately, the Commission hereby grants, on a one-time basis, the request to exempt the specifically named individual from the 10 CFR 55.47(a)(1) requirement that his extensive actual operating experience at a comparable facility be within 2 years before the date of application.

Dated: November 23, 2021.

For the Nuclear Regulatory Commission.

Brian D. Wittick,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–25980 Filed 11–29–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0213]

Target Fragilities for Equipment Vulnerable to High Energy Arcing Faults

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft research information letter; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft research information letter, ''Target Fragilities for Equipment Vulnerable to High Energy Arcing Faults, Draft Report for Comment.''

DATES: Submit comments by December 30, 2021. 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: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0213. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gabriel J. Taylor, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0781, email: *Gabriel.Taylor@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0213 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–2021–0213.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The draft Research Information Report ''Target Fragilities for Equipment Vulnerable to High Energy Arcing Faults, Draft Report for Comment'' is available in ADAMS under Accession No. ML21326A010.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include

Docket ID NRC–2021–0213 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC Office of Nuclear Regulatory Research (RES) is advancing the understanding and state-of-practice for modeling High Energy Arcing Faults (HEAF) in fire Probabilistic Risk Assessment (PRA). One important aspect of this research is to understand the HEAF effects on equipment important for nuclear safety. The high intensity and short duration of a HEAF exposure causes substantially different heat transfer conditions than a classical thermal fire case. As such, there was a need to develop HEAF specific damage and ignition limits to support advancements. The NRC collaborated with the Electric Power Research Institute (EPRI) to develop technical consensus positions on the damage and ignition limits of equipment important to plant safety and commonly evaluated in fire PRAs. The target fragility limits are based on operating experience, small and large scale testing, lessons learned from a Phenomena Identification and Ranking Table exercise, results from analytical tools, and judgement.

The draft research information letter presents the NRC–RES/EPRI working groups consensus on the damage and ignition limits of nuclear facility targets that are important to safety. It includes specific energy fluence levels that cause damage to components such as electrical cables, cable protective features, and non-segregated phase bus ducts. The conclusions from this report will be used in conjunction with HEAF hazard estimates to develop zones of influence to support improvements to fire PRA methods.

Dated: November 24, 2021.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire and External Hazards Analysis Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2021–26018 Filed 11–29–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0214]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This monthly notice includes all amendments issued, or proposed to be issued, from October 15, 2021, to November 10, 2021. The last monthly notice was published on November 2, 2021.

DATES: Comments must be filed by December 30, 2021. A request for a hearing or petitions for leave to intervene must be filed by January 31, 2022.

ADDRESSES: You may submit comments by any of the following methods, however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0214. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0214, facility name, unit number(s), docket number(s), application date, and subject 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–2021–0214.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* 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: You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (*https://*

www.regulations.gov). Please include Docket ID NRC–2021–0214, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this document, the Commission finds that the licensees' analyses provided, consistent with Section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR), ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, ''Issuance of amendment,'' operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue

an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The table below provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing

information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit 3; New London County, CT; Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC; Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Units 1 and 2; Louisa County, VA	
Docket No(s)	50–338, 50–339, 50–395, 50–423.
Application date	October 7, 2021.
ADAMS Accession No	ML21280A328.
Location in Application of NSHC	Pages 5 and 6 of Enclosure.
Brief Description of Amendment(s)	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–569, ''Revise Response Time Testing Definition.'' The proposed amendment would revise the technical specification definition for Engineered Safety Feature Response time and Reactor Trip System Response Time Testing.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	G. Ed Miller, 301–415–2481.
Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC	
Docket No(s)	50–400.
Application date	August 6, 2021.
ADAMS Accession No	ML21218A197.
Location in Application of NSHC	Page 29–44 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment would revise Technical Specification 3.3.1, ''Reactor Trip System Instrumentation,'' to adjust the reactor trip on turbine interlock from interlock P–7 (Low Power Reactor Trips Block) to interlock P–8 (Power Range Neutron Flux).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Cummings, Associate General Counsel, Mail Code DEC45, 550 South Tryon Street, Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Michael Mahoney, 301–415–3867.
Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Unit Nos. 1 and 2; Beaver County, PA	
Docket No(s)	50–334, 50–412.
Application date	October 30, 2020.
ADAMS Accession No	ML21167A209.
Location in Application of NSHC	Pages 36–37 of the Attachment.
Brief Description of Amendment(s)	The amendments would revise the Emergency Plan for Beaver Valley Power Station, Unit Nos. 1 and 2.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Damon D. Obie, Esq, 835 Hamilton St., Suite 150, Allentown, PA 18101.
NRC Project Manager, Telephone Number	Sujata Goetz, 301–415–8004.
Entergy Louisiana, LLC, and Entergy Operations, Inc.; River Bend Station, Unit 1; West Feliciana Parish, LA; Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS; Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Pope County, AR; Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; St. Charles Parish, LA	
Docket No(s)	50–313, 50–368, 50–416, 50–458, 50–382.
Application date	October 6, 2021.
ADAMS Accession No	ML21279A231.
Location in Application of NSHC	Pages 5–7 of the Enclosure.
Brief Description of Amendment(s)	The amendments would revise Technical Specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–554, ''Revise Reactor Coolant Leakage Requirements,'' for Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station, Unit 1; River Bend Station, Unit 1; and Waterford Steam Electric Station, Unit 3. The proposed amendments would revise the TS definitions related to Leakage and the reactor coolant system operational leakage TS, for each facility, to clarify the requirements.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Anna Vinson Jones, Assistant General Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.
NRC Project Manager, Telephone Number	Siva Lingam, 301–415–1564.
Entergy Louisiana, LLC, and Entergy Operations, Inc.; River Bend Station, Unit 1; West Feliciana Parish, LA; Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS; Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; St. Charles Parish, LA; Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Pope County, AR	
Docket No(s)	50–313, 50–368, 50–416, 50–458, 50–382.
Application date	September 23, 2021.

LICENSE AMENDMENT REQUEST(S)—Continued

ADAMS Accession No	ML21266A161.
Location in Application of NSHC	Pages 14–15 of the Enclosure.
Brief Description of Amendment(s)	The amendments would revise Technical Specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–541, Revision 2, ''Add Exceptions to Surveillance Requirements for Valves and Dampers Locked in the Actuated Position.'' The proposed amendments would modify certain TS surveillance requirements (SRs) by adding exceptions to consider the SR met when automatic valves or dampers are locked, sealed, or otherwise secured in the actuated position in order to consider the SR met. Securing the automatic valve or damper in the actuated position may affect the operability of the system or any supported systems. The associated limiting condition for operation is met if the subject structure, system, or component remains operable (i.e., capable of performing its specified safety function).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Anna Vinson Jones, Assistant General Counsel, Entergy Services, Inc.,101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.
NRC Project Manager, Telephone Number	Siva Lingam, 301–415–1564.

Exelon FitzPatrick, LLC and Exelon Generation Company, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY

Docket No(s)	50–333.
Application date	July 30, 2021.
ADAMS Accession No	ML21211A078.
Location in Application of NSHC	Pages 30–32 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would modify the James A. FitzPatrick Nuclear Power Plant licensing basis by the addition of a License Condition to allow for the implementation of the provisions of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.'' The provisions of 10 CFR 50.69 allow adjustment of the scope of equipment subject to special treatment controls (e.g., quality assurance, testing, inspection, condition monitoring, assessment, and evaluation). For equipment determined to be of low safety significance, alternative treatment requirements can be implemented in accordance with this regulation. For equipment determined to be of high safety significance, requirements will not be changed or will be enhanced.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Donald P. Ferraro, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Suite 305, Kennett Square, PA 19348.
NRC Project Manager, Telephone Number	Justin Poole, 301–415–2048.

Exelon FitzPatrick, LLC and Exelon Generation Company, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY

Docket No(s)	50–333.
Application date	July 30, 2021.
ADAMS Accession No	ML21211A053.
Location in Application of NSHC	Pages 5–6 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would modify the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) Technical Specification (TS) requirements to permit the use of Risk-Informed Completion Times (RICTs) in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–505, Revision 2, ''Provide Risk—Informed Extended Completion Times—RITSTF Initiative 4b,'' (ADAMS Accession No. ML18183A493). A model safety evaluation was provided by the NRC to the TSTF on November 21, 2018 (ADAMS Accession No. ML18253A085). The proposed amendment would modify the TS requirements related to RICTs for Required Actions (Action allowed outage times for FitzPatrick) to provide the option to calculate a longer RICT. The RICT program is added to TS Section 5.5, Programs and Manuals. Some of the modified Required Actions in TSTF–505 are not applicable to FitzPatrick. Also, there are some plant-specific Required Actions not included in TSTF–505 that are included in this proposed amendment.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Donald P. Ferraro, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Suite 305, Kennett Square, PA 19348.
NRC Project Manager, Telephone Number	Justin Poole, 301–415–2048.

Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2; Will County, IL; Exelon Generation Company, LLC; Byron Station, Units 1 and 2, Ogle County, IL; Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert County, MD; Exelon Generation Company, LLC, Clinton Power Station, Unit 1, DeWitt County, IL; Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL; Exelon Generation Company, LLC and Exelon FitzPatrick, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY; Exelon Generation Company, LLC, LaSalle County Station, Units 1 and 2; LaSalle County, IL; Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA; Exelon Generation Company, LLC; Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY; Exelon Generation Company, LLC and PSEG Nuclear LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York and Lancaster Counties, PA; Exelon Generation Company, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL; Exelon Generation Company, LLC; R.E. Ginna Nuclear Power Plant; Wayne County, NY

Docket No(s)	50–456, 50–457, 50–454, 50–455, 50–317, 50–318, 50–461, 50–237, 50–249, 50–333, 50–373, 50–374, 50–352, 50–353, 50–410, 50–277, 50–278, 50–254, 50–265, 50–244.
Application date	September 27, 2021.

LICENSE AMENDMENT REQUEST(S)—Continued

ADAMS Accession No	ML21270A069.
Location in Application of NSHC	Attachment 1, Pages 5–6.
Brief Description of Amendment(s)	The proposed amendments would revise the Technical Specifications (TSs) for each facility based on Technical Specification Task Force (TSTF) Traveler TSTF–541, Revision 2, ''Add Exceptions to Surveillance Requirements [SRs] for Valves and Dampers Locked in the Actuated Position'' (ADAMS Accession No. ML19240A315). The proposed amendments would also make similar changes to SRs not included in TSTF–541, Revision 2, and additional editorial changes to the TSs.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Blake Purnell, 301–415–1380.

NextEra Energy Seabrook, LLC; Seabrook Station, Unit 1; Rockingham County, NH

Docket No(s)	50–443.
Application date	July 21, 2021, as supplemented by letter dated September 22, 2021.
ADAMS Accession No	ML21202A238, ML21265A416.
Location in Application of NSHC	Pages 14–15 of the Enclosure.
Brief Description of Amendment(s)	The proposed license amendment would modify Seabrook Station, Unit 1 Technical Specifications 3.8.3, ''Onsite Power Distribution—Operating'' by increasing the Allowed Outage Time for the 120-volt AC [alternating current] vital instrument panel inverters, establishing a new required action for two inoperable 120-volt AC vital instrument panel inverters of the same electrical train and related administrative changes.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Managing Attorney—Nuclear, Florida Power and Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.
NRC Project Manager, Telephone Number	Justin Poole, 301–415–2048.

Nine Mile Point Nuclear Station, LLC and Exelon Generation Company, LLC; Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY

Docket No(s)	50–410.
Application date	September 30, 2021.
ADAMS Accession No	ML21273A017.
Location in Application of NSHC	Pages 3–5 of the Enclosure.
Brief Description of Amendment(s)	The proposed changes would revise the Nine Mile Point, Unit 2, technical specifications related to reactor pressure vessel (RPV) water inventory control (WIC) based on Technical Specifications Task Force (TSTF) Traveler TSTF–582, Revision 0, ''RPV WIC Enhancements'' (TSTF–582) (ADAMS Accession No. ML19240A260), and the associated NRC staff safety evaluation for TSTF–582 (ADAMS Accession No. ML20219A333).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Richard Guzman, 301–415–1030.

PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ; PSEG Nuclear LLC; Salem Nuclear Generating Station, Units 1 and 2; Salem County, NJ

Docket No(s)	50–354, 50–272, 50–311.
Application date	September 29, 2021.
ADAMS Accession No	ML21272A184.
Location in Application of NSHC	Pages 7–8 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments revise the Hope Creek Generating Station and Salem Nuclear Generating Stations, Units 1 and 2, Technical Specifications (TSs) to remove TS definitions for Member(s) of the Public, Site Boundary, and Unrestricted Area which are already present in the definitions found in the Offsite Dose Calculation Manual for each site as well as 10 CFR 20.1003. The proposed amendments also remove figures of the site and surrounding area from the TSs.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.
NRC Project Manager, Telephone Number	James Kim, 301–415–4125.

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA

Docket No(s)	50–321, 50–366.
Application date	October 13, 2021.
ADAMS Accession No	ML21286A595.
Location in Application of NSHC	Pages E–7 through E–9 of Enclosure.
Brief Description of Amendment(s)	By letter dated October 13, 2021, Southern Nuclear Operating Company submitted a License Amendment Request (LAR) for Edwin I. Hatch Nuclear Plant, Units 1 and 2. The proposed LAR revises Technical Specification (TS) 3.3.6.1, ''Primary Containment Isolation Instrumentation,'' Table 3.3.6.1–1, to eliminate the requirement for automatic main steam line isolation on high turbine building area temperature (Function 1.f).
Proposed Determination	NSHC.

LICENSE AMENDMENT REQUEST(S)—Continued

Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA; Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–321, 50–348, 50–364, 50–366, 50–424, 50–425.
Application date	September 29, 2021.
ADAMS Accession No	ML21273A072.
Location in Application of NSHC	Page E–3 through E–5 of Enclosure.
Brief Description of Amendment(s)	The proposed amendment would adopt of Technical Specification Task Force (TSTF) Traveler TSTF–554, ''Revise Reactor Coolant Leakage Requirements,'' which is an approved change to the Standard Technical Specifications, into the Technical Specifications (TSs) of Joseph M. Farley Nuclear Plant, Units 1 and 2; Edwin I. Hatch Nuclear Plant, Units 1 and 2; and Vogtle Electric Generating Plant, Units 1 and 2. The proposed amendment revises the TS definition of ''LEAKAGE,'' clarifies the requirements when pressure boundary leakage is detected and adds a Required Action when pressure boundary leakage is identified.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Units 1 and 2; Louisa County, VA

Docket No(s)	50–338, 50–339.
Application date	September 9, 2021.
ADAMS Accession No	ML21252A514.
Location in Application of NSHC	Page 2 of 4 of Enclosure.
Brief Description of Amendment(s)	The proposed amendment would revise Technical Specification (TS) 5.6.7, ''Steam Generator (SG) Program,'' and TS 5.5.8, ''Steam Generator Tube Inspection Report,'' in accordance with TSTF–577, Revision 1.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	G. Ed Miller, 301–415–2481.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the table below. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC

Docket No(s)	50–369, 50–370, 50–400, 50–413, 50–414.
Amendment Date	October 7, 2021.
ADAMS Accession No	ML21224A101.
Amendment No(s)	Catawba—310 (Unit 1) and 306 (Unit 2), Harris—186 (Unit 1), McGuire—320 (Unit 1) and 299 (Unit 2).

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	For Catawba Nuclear Station (CNS) and McGuire Nuclear Station, the proposed change would revise Technical Specification (TS) Section 3.3.2, ''Engineered Safety Features Actuation System (ESFAS) Instrumentation'' specifically Table 3.3.2–1 dealing with the ESFAS interlock, reactor trip function, and for Shearon Harris Nuclear Power Plant the proposed change would also revise the ESFAS interlock, reactor trip function found in TS Table 3.3–3 of Section 3/4.3.2, ''Engineered Safety Features Actuation System Instrumentation.'' This change will thereby identify the enabled functions and the applicable MODES for each enabled function which will remove the turbine trip function of the P–4 interlock in MODE 3 from the existing specifications. Additionally, for CNS only, this change will remove the steam dump function of the P–4 interlock in MODES 1, 2, and 3.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Unit Nos. 1 and 2; Beaver County, PA

Docket No(s)	50–334, 50–412.
Amendment Date	October 15, 2021.
ADAMS Accession No	ML21214A275.
Amendment No(s)	312 (Unit 1), 202 (Unit 2).
Brief Description of Amendment(s)	The amendments increased the number of operable atmospheric dump valves to four for Unit 1.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Unit Nos. 1 and 2; Beaver County, PA

Docket No(s)	50–334, 50–412.
Amendment Date	November 1, 2021.
ADAMS Accession No	ML21197A009.
Amendment No(s)	313 (Unit 1), 203 (Unit 2).
Brief Description of Amendment(s)	These amendments update the methods used to determine reactor coolant system pressure and temperature limits for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Holtec Pilgrim, LLC and Holtec Decommissioning International; Pilgrim Nuclear Power Station; Plymouth County, MA

Docket No(s)	50–293.
Amendment Date	October 21, 2021.
ADAMS Accession No	ML21251A162 (Package).
Amendment No(s)	257.
Brief Description of Amendment(s)	The amendment replaces the Pilgrim Permanently Defueled Emergency Plan and associated Permanently Defueled Emergency Action Level (EAL) Technical Bases Document (hereafter referred to as the EAL scheme) with an Independent Spent Fuel Storage Installation (ISFSI) Only Emergency Plan and associated EAL scheme. This license amendment is effective upon NRC receipt of written notification from Holtec Decommissioning, International, that all spent fuel is in dry storage located onsite at the newly built ISFSI (ISFSI II) and shall be implemented within 90 days of the effective date. This change upon implementation would reflect the complete removal of all fuel from the spent fuel pool and would permit specific reductions in the size and makeup of the Emergency Response Organization once the design basis accident related to the spent fuel (fuel handling accident) is eliminated.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Nine Mile Point Nuclear Station, LLC and Exelon Generation Company, LLC; Nine Mile Point Nuclear Station, Unit 1; Oswego County, NY

Docket No(s)	50–220.
Amendment Date	November 2, 2021.
ADAMS Accession No	ML21256A179.
Amendment No(s)	246.
Brief Description of Amendment(s)	The amendment revised the Nine Mile Point, Unit 1, Technical Specification (TS) related to reactor pressure vessel (RPV) water inventory control (WIC) based on Technical Specification Task Force (TSTF) Traveler TSTF–582, Revision 0, ''RPV WIC Enhancements.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Unit 2; Luzerne County, PA

Docket No(s)	50–388.
Amendment Date	November 4, 2021.
ADAMS Accession No	ML21229A157.
Amendment No(s)	263.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The amendment modified Technical Specification 3.8.7, ''Distribution Systems—Operating,'' which temporarily extended the completion time to allow replacement of two transformers.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL

Docket No(s)	50–259, 50–260, 50–296.
Amendment Date	October 28, 2021.
ADAMS Accession No	ML21285A068.
Amendment No(s)	319 (Unit 1); 342 (Unit 2); 302 (Unit 3).
Brief Description of Amendment(s)	The amendments revised the Technical Specifications (TS) related to reactor pressure vessel (RPV) water inventory control (WIC) based on Technical Specification Task Force (TSTF) Traveler TSTF–582, Revision 0, ''RPV WIC Enhancements'' (TSTF–582) (ADAMS Accession No. ML19240A260), and the associated NRC safety evaluation for TSTF–582 (ADAMS Accession No. ML20219A333).
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN

Docket No(s)	50–327, 50–328.
Amendment Date	October 27, 2021.
ADAMS Accession No	ML21245A267.
Amendment No(s)	356 (Unit 1), 349 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Technical Specification (TS) to allow the use of Westinghouse RFA–2 fuel with Optimized ZIRLOTM cladding. Further, the amendments revised TS 5.6.3, ''Core Operating Limits Report,'' to replace the loss-of-coolant accident (LOCA) analysis evaluation model references with the FULL SPECTRUMTM LOCA evaluation model. Finally, the amendment revised the TSs to permit the use of 52 full-length control rods with no full-length control rod assembly in core location H–08. The license amendments include reference to a related exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket No(s)	50–390, 50–391.
Amendment Date	November 3, 2021.
ADAMS Accession No	ML21189A307.
Amendment No(s)	149 (Unit 1), 56 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification 5.7.2.19, ''Containment Leakage Rate Testing Program,'' by replacing the reference to Regulatory Guide 1.163, ''Performance Based Containment Leak Test Program,'' with a reference to Nuclear Energy Institute (NEI) 94 01, Revision 3–A, July 2012, ''Industry Guideline for Implementing Performance Based Option of 10 CFR Part 50, Appendix J,'' and the conditions and limitations specified in NEI 94 01, Revision 2–A, of the same name, dated October 2008. The amendments extended the Type A primary containment integrated leak rate test interval from 10 to 15 years and the Type C local leak rate test interval from 60 to up to 75 months. The amendments also clarified the pressure value for leakage rate testing purposes.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Unit Nos. 1 and 2; Louisa County, VA

Docket No(s)	50–338, 50–339.
Amendment Date	October 19, 2021.
ADAMS Accession No	ML21232A217.
Amendment No(s)	288 (Unit 1) and 271 (Unit 2).
Brief Description of Amendment(s)	The amendments augment Technical Specification Surveillance Requirements 3.8.4.2 and 3.8.4.5 to include verification of total battery connection resistance.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Virginia Electric and Power Company; Surry Power Station, Unit No. 1; Surry County, VA; Virginia Electric and Power Company; Surry Power Station, Unit No. 2; Surry County, VA

Docket No(s)	50–280, 50–281.
Amendment Date	October 26, 2021.
ADAMS Accession No	ML21188A174.
Amendment No(s)	305 (Unit 1), 305 (Unit 2).

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The proposed amendments would revise Technical Specifications 2.1.A.1.b, ''Safety Limit Reactor Core,'' to reflect the peak fuel centerline melt temperature specified in WCAP–17642–P–A, Revision 1, ''Westinghouse Performance Analysis and Design Model (PAD5).''
Public Comments Received as to Proposed NSHC (Yes/No).	Yes.

IV. Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as separate individual notice. It was published as an individual notice either because time did not allow the Commission to wait for this monthly notice or because the action involved exigent circumstances. It is repeated here because the monthly notice lists all amendments issued or proposed to be issued involving NSHC.

For details, including the applicable notice period, see the individual notice in the **Federal Register** on the day and page cited.

LICENSE AMENDMENT REQUEST(S)—REPEAT OF INDIVIDUAL FEDERAL REGISTER NOTICE

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2; Goodhue County, MN

Docket No(s)	50–282, 50–306.
Application Date	October 7, 2021.
ADAMS Accession No	ML21281A017.
Brief Description of Amendment(s)	The proposed amendments would allow a one-time extension of the allowed outage time for the motor-driven cooling pump as a contingency for planned maintenance on the cooling water system.
Date & Cite of **Federal Register** Individual Notice.	October 21, 2021 (86 FR 58308).
Expiration Dates for Public Comments & Hearing Requests.	Public Comment: November 22, 2021 Hearing Requests: December 20, 2021.

For the Nuclear Regulatory Commission.

Dated: November 23, 2021.

Caroline L. Carusone,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–25907 Filed 11–29–21; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Chief Human Capital Officers Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Chief Human Capital Officers (CHCO) Council plans to meet on Tuesday, December 14, 2021. The meeting will start at 9:00 a.m. EDT and will be held by Zoom.

FOR FURTHER INFORMATION CONTACT: CHCO Council email—*chcocouncil@opm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the CHCO Council to host their annual public meeting per Public Law 107–296.

The CHCO Council is the principal interagency forum to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information and legislation affecting human resources operations and organizations.

Persons desiring to attend this public meeting of the Chief Human Capital Officers Council should contact OPM at least 5 business days in advance of the meeting date at the email address shown below. Note: If you require an accommodation, please contact *chcocouncil@opm.gov* no later than December 7, 2021.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2021–26066 Filed 11–29–21; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 30–2, Annuitant's Report of Earned Income, 3206–0034

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection (ICR) with edits, Annuitant's Report of Earned Income, RI 30–2. This ICR has been revised in the following manner: (1) The display of the OMB control number (2) updated the survey year (3) updated OPM's mailing address (4) updated the edition date (5) omission of the scannable bubbles (6) added the Federal Relay Service contact information.

DATES: Comments are encouraged and will be accepted until December 30, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *http://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 or fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the

Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0034) was previously published in the **Federal Register** on July 8, 2021 at 86 FR 36166, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits under title 5, U.S.C. Sections 8337 and 8455. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Annuitant's Report of Earned Income *(Paper Form).*

OMB Number: 3206–0034.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 21,000.

Estimated Time per Respondent: 35 minutes.

Total Burden Hours: 12,250.

Title: Annuitant's Report of Earned Income *(Services Online (SOL)).*

Number of Respondents: 24,040.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 1,995.

Title: Annuitant's Report of Earned Income *(Electronic Form).*

Number of Respondents: 14,041.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 2,340.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2021–26071 Filed 11–29–21; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0262]

Submission for Review: Report of Withholdings and Contributions for Health Benefits, Life Insurance and Retirement

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on the renewal of a previously approved information collection. Standard Form 2812 (Report of Withholdings and Contributions for Health Benefits, Life Insurance and Retirement), Standard Form 2812A (Report of Withholdings and Contributions for Health Benefits by Enrollment Code), and OPM Form 1523 (Supplemental Semiannual Headcount Report).

DATES: Comments are encouraged and will be accepted until January 31, 2022.

ADDRESS: You may submit comments to the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Chief Financial Office, Financial Services, 1900 E Street NW, Room 5478, Washington, DC 20415, Attention: Yadira Vega, or sent by email to *yadira.vega@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0176).

The Office of Management and Budget is particularly interested in comments that:

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.

Standard Form 2812 (Report of Withholdings and Contributions for Health Benefits, Life Insurance and Retirement), Standard Form 2812A (Report of Withholdings and Contributions for Health Benefits by Enrollment Code), and OPM Form 1523 (Supplemental Semiannual Headcount Report) are used to collect information from payroll providers regarding withholdings, in dollar amounts, for health and life insurance and retirement each pay period (SF 2812 and 2812A) and to collect information twice each year regarding the number of employees enrolled in the three benefit programs (OPM Form 1523).

Analysis

Agency: Trust Fund Management of the Office of the Chief Financial Officer, Office of Personnel Management.

Title: (1) Report of Withholdings and Contributions for Health Benefits, Life Insurance and Retirement (Standard Form 2812); (2) Report of Withholdings and Contributions for Health Benefits by Enrollment Code (Standard Form 2812–A); (3) Supplemental Semiannual Headcount Report (OPM Form 1523).

OMB Number: 3206–0262.

Frequency: Semiannually for OPM Form 1523 and once-per-pay-period for Standard Form 2812 and Standard Form 2812–A.

Affected Public: Public Entities with Federal Employees and Retirees.

Number of Respondents: 5,200.

Estimated Time per Respondent: 30 Minutes.

Total Burden Hours: 2700.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2021–26063 Filed 11–29–21; 8:45 am]

BILLING CODE 6325–23–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: Employee's Certification; OMB 3220–0140.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's current marriage to the applicant is valid.

The requirements for obtaining documentary evidence to determine valid marital relationships are prescribed in 20 CFR 219.30 through 219.35. Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346, Employee's Certification, to obtain the information needed to determine whether the employee's current marriage is valid. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent. The RRB proposes no changes to Form G–346 or Form G–346sum.

Consistent with 20 CFR 217.17, the RRB uses Form G–346sum, *Employee's Certification Summary,* which mirrors the information collected on Form G–346, when an employee, after being interviewed by an RRB field office representative ''signs'' the form using an alternative signature method known as ''attestation.'' Attestation refers to the action taken by the RRB field office representative to confirm and annotate the RRB's records of the applicant's affirmation under penalty of perjury that the information provided is correct and the applicant's agreement to sign the form by proxy. Completion is required to obtain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (86 FR 53120 on September 24, 2021) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employee's Certification.

OMB Control Number: 3220–0140.

Forms submitted: G–346 and G–346sum.

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, spouses of retired railroad employees may be entitled to an annuity. The collection obtains information from the employee about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–346	3,300	5	300
G–346sum	2,260	5	188
Total	5,560		488

2. *Title and Purpose of information collection:* Railroad Separation Allowance or Severance Pay Report; OMB 3220–0173.

Section 6 of the Railroad Retirement Act (45 U.S.C. 231e) provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. Also, Section 4(a–1)(iii) of the Railroad Unemployment Insurance Act provides that a railroad employee who is paid a separation allowance is disqualified for unemployment and sickness benefits for the period of time the employee would have to work to earn the amount of the allowance. The reporting requirements are specified in 20 CFR 209.14.

In order to calculate and provide payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9, Report of Separation Allowance or Severance Pay, to obtain information from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. Employers currently have the option of submitting their reports on

paper Form BA–9, (or in like format) on a CD–ROM, or by File Transfer Protocol (FTP), or Secure Email. Completion is mandatory. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (86 FR 53120 on September 24, 2021) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Separation Allowance or Severance Pay Report.

OMB Control Number: 3220–0173.

Form(s) submitted: BA–9.

Type of request: Revision of a currently approved collection.

Affected public: Private Sector; Businesses or other for profits.

Abstract: Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The collection obtains information concerning the separation allowances and severance payments paid from railroad employers.

Changes proposed: The RRB proposes no changes to the manual, CD–ROM, secure email, or FTP Version of Form BA–9. The RRB proposes the addition of an internet equivalent version of Form BA–9 to the information collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
BA–9 (Paper)	100	76	127
BA–9 (Internet)	215	15	54
BA–9 (CD–ROM)	10	76	13
BA–9 (Secure Email)	25	76	32
BA–9 (FTP)	10	76	13
Total	360	.....	239

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@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. 2021–26007 Filed 11–29–21; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93651; File No. SR–FINRA–2021–029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6732 and Expand the Scope of Exemptions That FINRA May Grant ATSs From the TRACE Reporting Requirements

November 23, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 6732 to provide FINRA with authority to, subject to conditions, exempt transactions by a member alternative trading system (''ATS'') that meet specified criteria from the transaction reporting obligations of FINRA Rule 6730 (Transaction Reporting).

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6730 generally requires that each FINRA member that is a party to a transaction in a TRACE-Eligible Security[3] report the transaction to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''TRACE-Eligible Security'' generally is defined as a debt security that is U.S. dollar-denominated and is: (1) Issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); or (3) a U.S. Treasury Security as

TRACE within the period of time prescribed in the rule. ''Party to a transaction'' means an introducing broker-dealer, if any, an executing broker-dealer or a customer.[4] Thus, in transactions in a TRACE-Eligible Security between members, each member is a party to the transaction and is required to report the transaction. An ATS is a party to each transaction in a TRACE-Eligible Security occurring through its system and has a TRACE transaction reporting obligation unless an exception or exemption applies.[5]

FINRA adopted Rule 6732 (Exemption from Trade Reporting Obligation for Certain Alternative Trading Systems) in response to concerns raised by members regarding operational difficulties with respect to certain transactions on an ATS—particularly, with respect to ATS models where the ATS does not always have a role in the clearance and settlement of transactions occurring on its system.[6] In such cases, because back-end systems often are programmed to clear against the contra-party identified on TRACE trade reports, member subscribers preferred to TRACE report against the party with which they clear and settle the trade (*i.e.,* another subscriber, rather than the ATS). Rule 6732 addresses these concerns by providing FINRA with the authority, subject to specified conditions, to exempt the ATS from the TRACE reporting requirement so that member subscribers can report against their contra-party for clearance and settlement purposes. To be eligible for the relief, the ATS must ensure, among other things, that: The trade is between FINRA members; the trade does not pass through any ATS account; and the ATS does not exchange TRACE-Eligible Securities or funds on behalf of the subscribers or take either side of the trade for clearing or settlement purposes (including, but not limited to, at DTC or otherwise), or in any other way insert itself into the trade.[7]

FINRA now is amending Rule 6732 to expand the scope of transactions that may be exempted under the rule to include trades that involve only one FINRA member (other than the ATS). FINRA has observed that in many cases, transactions on an ATS that involve only one member are otherwise similar to the transactions that are currently eligible for exemptive relief under Rule 6732. Specifically, in such transactions, the counterparties on the ATS (*e.g.,* a member and a bank) may clear directly with each other rather than the ATS. FINRA believes that expanding the scope of the current exemption to permit its use for transactions between a member (other than the ATS) and a non-member subscriber would extend the benefits of the rule—including simplifying compliance with TRACE trade reporting obligations—for additional ATS models and member subscribers, while capturing substantially the same regulatory information and enabling public dissemination of the transaction in a more streamlined manner.

For example, under current reporting requirements, where a member (BD) sells a TRACE-Eligible Security to a non-member (C) on an ATS, Rule 6730 generally requires that BD report a sale to the ATS and the ATS report a buy from BD. The ATS must also report the corresponding sale to C.[8] Under the proposed expansion to the exemption, where granted, the ATS would not be required to report its transaction with BD or C to TRACE. However, the overall transaction would continue to be transparent to the public, as the member subscriber would report the transaction with the non-member subscriber counterparty and the trade would be disseminated, subject to the limitations on dissemination set forth in Rule 6750 (Dissemination of Transaction Information).[9]

Thus, for a sale transaction, BD would be required to report to TRACE a sale to C, identifying the trade as having occurred on the ATS in its TRACE report using the ATS's separate identifier obtained in compliance with Rule 6720(c) (Alternative Trading Systems). This sale transaction would be disseminated upon receipt consistent with Rule 6750.[10] Similarly, for a purchase transaction, BD would be required to report to TRACE a buy from C, identifying the trade as having occurred on the ATS in its TRACE report using the ATS's separate identifier. This purchase transaction would be disseminated upon receipt consistent with Rule 6750.[11] In both cases, the ATS would be required to submit monthly files of all exempted trades to FINRA as is required under the existing exemption.

FINRA believes it is appropriate to expand the eligibility criteria for the Rule 6732 exemption to include transactions between a member and non-member because, where the parties clear directly with each other, these transactions can present the same operational challenges for members as trades between two members, and granting the exemption with regard to these types of trades would not compromise transparency because such transactions will continue to be trade reported by members and disseminated by FINRA in accordance with existing rules. Moreover, exempt trades would be disseminated by FINRA in a more streamlined manner because there would be one, rather than two, disseminated trade reports in connection with the transaction on the ATS. In addition, the other conditions for the exemption would continue to apply, including the requirement that any ATS granted an exemption must enter into a written agreement with each member that is a ''Party to a Transaction'' with respect to exempted trades, thereby ensuring that reporting members are aware that the ATS has been granted a Rule 6732 exemption and that exempted trades on the ATS are subject to different reporting requirements—specifically, that the reporting member must identify a party other than the ATS as its contra-party and identify the ATS on which the trade had occurred in its TRACE reports. With respect to a transaction between a member and a non-member on an ATS

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defined in paragraph (p). ''TRACE-Eligible Security'' does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in paragraph (o). *See* Rule 6710(a).

[4] ''Customer'' includes a broker-dealer that is not a FINRA member.

[5] *See Regulatory Notice* 14–53 (November 2014).

[6] *See* Securities Exchange Act Release No. 76677 (December 17, 2015), 80 FR 79966 (December 23, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–055).

[7] An ATS granted an exemption pursuant to Rule 6732 continues to be deemed a ''party'' to the transactions covered by the exemption; is required to submit monthly files of all exempted trades to FINRA; is required to remit to FINRA a transaction reporting fee based on the fee schedule set forth in Rule 7730(b)(1) for each exempted sell transaction occurring on the ATS; and is required to enter into an agreement with each member subscriber that is a ''party to a transaction'' with respect to any trade for which the ATS is exempted specifying that trades must be reported by such party pursuant to Rule 6730(c)(13) identifying the trade as having occurred on the ATS (using the ATS's separate MPID obtained in compliance with Rule 6720(c)).

[8] In transactions between members, FINRA disseminates only the sale transaction. However, in a transaction between a member and a non-member, FINRA disseminates the purchase or sale transaction with the non-member.

[9] Under Rule 6750(c) (Transaction Information Not Disseminated), FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is: Appended with the non-member affiliate-principal transaction indicator pursuant to Rule 6730(d)(4)(E); a transfer of certain proprietary securities positions effected in connection with a merger or direct or indirect acquisition; a List or Fixed Offering Price Transaction or a Takedown Transaction; a Securitized Product that is: A CMBS; a CDO; or a CMO if the CMO transaction value is $1 million or more (calculated based upon original principal balance) and the transaction does not qualify for periodic dissemination under Rule 6750(b), except as may be otherwise provided in Rule 7730; or a U.S. Treasury Security.

[10] *See supra* note 9.

[11] *See supra* note 9.

that is a ''covered ATS'' under Rule 6730.07, the ATS must provide to the member subscriber (and the member subscriber must report to TRACE using) the FINRA-assigned identifier for each non-FINRA member subscriber.[12]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 365 days following Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will simplify compliance for certain ATSs and their member subscribers by permitting the ATS to report on a periodic basis to FINRA and permitting member subscribers to trade report with the party against which it will clear the trade. FINRA also notes that the regulatory information captured and the public transparency with respect to exempted trades will not be compromised because such transactions will continue to be trade reported by members and disseminated by FINRA in accordance with existing rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Any ATS that meets the criteria set forth in the proposed rule would be able to apply for the exemption with respect to eligible transactions occurring on its platform. In addition, irrespective of an ATS's model or whether the ATS is granted an exemption pursuant to this proposal, all ATSs that are a ''party to a transaction'' must continue to pay a transaction reporting fee based on the fee schedule set forth in Rule 7730(b)(1) for each exempted sell transaction occurring through the ATS.

Economic Impact Assessment

(a) Need for the Rule

As discussed above, an ATS is a party to a transaction in any TRACE-eligible securities occurring on that ATS. As such, an ATS must report the transaction to TRACE as provided for in Rule 6730, unless an exception or exemption applies. An ATS's business model structure impacts the way trades are facilitated on the platform and, therefore, which trades must be reported to TRACE and by whom. In instances where the functional activities of the ATS are more limited with respect to a transaction, as discussed above, FINRA believes that the proposed rule change is appropriate and may simplify compliance for these ATSs and their member subscribers and enables public dissemination of these transactions in a more streamlined manner.

(b) Economic Baseline

Rule 6732 provides FINRA with authority to exempt an ATS from TRACE transaction reporting requirements where the transactions on the ATS meet the conditions of Rule 6732. Not all ATSs that have been granted the Rule 6732 exemption could benefit from the proposed expanded scope—which relates to trades between a member and a non-member occurring on the platform. However, to the extent that trades on an ATS involve a member and a non-member, then such ATS could benefit from the expanded exemption (if it satisfies the other conditions in the rule). It is also possible that other ATSs may adapt their business models and become eligible for the expanded exemption, or that new entrants could arise that may benefit from the proposed expanded rule.

(c) Economic Impacts

FINRA has identified a small number of current ATSs on which trades between a member and a non-member occur (*i.e.,* trades that may potentially fall within the scope of the additional relief that the proposed exemption would provide).[14] If the exemption is requested by and granted to an ATS, member subscribers who execute trades on such ATS may be impacted. Where granted, an ATS that operates under the exemption presumably would benefit from reduced compliance costs by shifting from contemporaneous reporting of transactions to TRACE to periodic reporting and by paying a reporting fee only on exempted sell transactions.

An ATS that seeks and is granted an exemption under this proposed rule may incur costs to modify its system and must update its policies and procedures to reflect reporting consistent with the requirements of the rule. Each ATS may determine independently whether it wants to request the exemption, and, thus, it is likely that an ATS would only seek this exemption where it is preferable to standard reporting requirements.

Where an ATS seeks and is granted the exemption, member subscribers who transact through the ATS also may incur costs associated with modifying the reporting system to identify the ATS on TRACE reports (and to report the non-member as its counter party). These costs may include additional programming and testing along with updating policies and procedures. Members may also benefit where they prefer to trade report against the contra-party with which they will clear and settle the trade. Both member subscribers and ATSs may incur additional costs associated with creating and maintaining a written agreement with respect to the reporting exempt trades.

FINRA also considered the potential impacts of the proposed rule on investors and other parties that might rely on TRACE reporting. The proposed rule would not reduce the information collected and disseminated by FINRA on TRACE-eligible securities transactions occurring on an ATS. Member subscribers would continue to report to TRACE transactions occurring on an ATS that was granted the exemption within the time prescribed by FINRA rules and would identify the ATS on which the trade occurred. In addition, public transparency with respect to exempted trades will not be compromised because exempted transactions will continue to be disseminated by FINRA in accordance with existing rules.

(d) Alternatives Considered

No alternatives were considered.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[12] Likewise, an exempt ATS that is a ''covered ATS'' under 6730.07 must use the FINRA-assigned identifier to identify each non-FINRA member subscriber in the monthly transaction files that are required to be submitted to FINRA.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] FINRA is unable to estimate the number of transactions that may be covered under the expanded scope of the exemption because information on whether all trades meet all of the rule's conditions is not readily available.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2021–029 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2021–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2021–029, and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25988 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93670; File No. SR–FICC–2021–008]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Certain Revisions and Clarifications to the Rules

November 24, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules''), the FICC Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules'') and the FICC MBSD EPN Rules (''EPN Rules,'' and together with the GSD Rules and the MBSD Rules, the ''Rules'') to (1) incorporate in the Rules the affirmative undertakings that Members currently make in onboarding membership agreements; (2) incorporate into the Rules the governing law of agreements and other documents provided to FICC pursuant to the Rules; (3) clarify FICC's ability to rely on electronic signatures on agreements and other documents provided to FICC pursuant to the Rules; and (4) clarify in the GSD Rules and MBSD Rules that Members shall appoint a duly authorized representative in connection with their membership, and remove the requirement that FICC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization, as described in greater detail below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing amendments that would clarify, simplify and improve the disclosures in the Rules, primarily related to onboarding and other membership documentation between FICC and its Members. FICC, along with its affiliates, The Depository Trust Company and National Securities Clearing Corporation, has recently completed a review of the templates of onboarding agreements and other documents that are provided to FICC in connection with a firm's application for membership and the templates of agreements and documents Members may provide to FICC during the course of their membership pursuant to the Rules. In connection with this review,

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the GSD Rules, MBSD Rules and EPN Rules, as applicable, *available at https://www.dtcc.com/legal/rules-and-procedures.* GSD and MBSD have several membership categories. For ease of description, unless otherwise indicated by the context, the term ''Member'' is used to refer to all membership categories.

FICC is proposing to make certain revisions and clarifications to the Rules.

More specifically, the proposed rule changes would (1) incorporate in the Rules the affirmative undertakings that Members currently make in onboarding membership agreements; (2) incorporate into the Rules the governing law of agreements and other documents provided to FICC pursuant to the Rules; (3) clarify FICC's ability to rely on electronic signatures on agreements and other documents provided to FICC pursuant to the Rules; and (4) clarify in the GSD Rules and MBSD Rules that Members shall appoint a duly authorized representative in connection with their membership, and remove the requirement that FICC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization, as described in greater detail below.

Proposed Revisions To Incorporate Member Undertakings Into the Rules

FICC is proposing to revise GSD Rules 2A, 3A and 4(d), MBSD Rules 2A and 3, and EPN Rule 1 of Article III, to incorporate affirmative undertakings that Members currently make in their onboarding membership agreements.[6] Each of these Rules currently provide that an applicant for membership with FICC shall sign and deliver to FICC an agreement under which the applicant would agree to the affirmative undertakings that are listed in those Rules. These undertakings include, for example, to abide by the Rules and be bound by all the provisions thereof, and to pay any amounts that become payable by the Member to FICC pursuant to the Rules.[7]

To simplify and standardize the membership onboarding documentation, FICC is proposing to revise each of the Rules that includes these undertakings to state directly that Members agree to the undertakings listed in that Rule. In connection with this proposed change, FICC would remove these undertakings from the template membership agreements, which already provide that Members are bound by the Rules.

Proposed Revisions to Rules Regarding Governing Law

FICC is proposing to revise GSD Rule 38, MBSD Rule 29 and EPN Rule 9 of Article V, each of which currently state that the Rules are governed by New York law.[8] The proposed change would revise these Rules to include a statement that all agreements and other documents that are entered into between FICC and its Members are also governed by New York law, unless otherwise expressly provided. Currently, agreements and other documents entered into between FICC and its Members either include a governing law provision or are governed by New York law through the application of both (i) GSD Rule 38, MBSD Rule 29 and EPN Rule 9 of Article V, which provide that the rights and obligations under the Rules are governed by New York law, and (ii) the FICC membership agreements, which provide that the Rules (including the Rules referenced in this paragraph) govern the matters and transactions between FICC and its Members.

This proposed change would both clarify the governing law of the agreements and other documents entered into between FICC and its Members pursuant to the Rules, and would allow FICC to simplify those documents by removing the governing law provisions in such documents.

Proposed Revisions to Rules Regarding FICC's Reliance on Electronic Signatures

FICC is proposing to revise GSD Rule 32, MBSD Rule 24 and EPN Rule 15 of Article V, each of which currently lists the circumstances in which FICC would rely on an electronic signature.[9] The proposed revisions to these Rules would clarify that FICC may rely on an electronic signature with respect to any and all agreements and other documents delivered pursuant to the Rules. FICC would also remove reference to the circumstances in which it would accept an electronic signature, to make clear that FICC would do so in any circumstances. The proposed revisions would clarify and modernize the language in these Rules, which still refer to outdated modes of electronic communication, such as telex, and would align the language in this Rule to language used in the New York Electronic Signatures and Records Act.[10]

Proposed Revisions to Requirements Related to Members' Authorized Representatives

FICC is proposing to revise Section 1 of GSD Rule 40 and Section 1 of MBSD Rule 31, which describe Members' requirement to appoint an authorized representative in connection with their membership with FICC.[11] Currently, these Rules provide that a Member may designate an authorized representative that is not either a general partner or an officer of the Member by either a power of attorney or resolutions of the Member's board of directors, and requires such power of attorney and resolutions be in a form approved by FICC.[12] These Rules also require Members to provide FICC with the signatures of individuals who are authorized representatives for purposes of conducting business with FICC.[13]

In order to simplify the onboarding membership requirements, FICC is proposing to amend these Rules to clarify that Members must appoint a duly authorized representative, and to remove references to a power of attorney or resolutions of the Member's board of directors. The proposed change would also remove the requirement that FICC approve the form of power of attorney or resolutions of the Member's board of directors that evidences the due authorization of that representative. Finally, FICC is proposing to remove the requirement that Members provide FICC with the signatures of representatives who are authorized to conduct business with FICC.[14]

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.[15] FICC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes would clarify and improve the transparency of the Rules and would allow FICC to simplify the membership agreements and other documentation provided to it by Members pursuant to the Rules.

More specifically, the proposed changes would make clarifications to the Rules regarding (i) FICC's ability to rely on electronic signatures on agreements and other documents provided to it pursuant to the Rules; and (ii) Members' duly authorized representatives in connection with their memberships. The proposed changes would also update the Rules in order to allow FICC to simplify the onboarding and other membership agreements and documents by incorporating in the

[6] *See* Section 7 of GSD Rule 2A, Section 4 of GSD Rule 3A and Section 13 of GSD Rule 4(d); Section 5 of MBSD Rule 2A and MBSD Rule 3(A)(d)(i); and Section 3 of EPN Rule 1 of Article III (All references to ''Articles'' herein shall be referring to Articles of the EPN Rules.); *id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] N.Y. State Tech. Law § 304(2) (McKinney 2021).

[11] *Supra* note 5.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] 15 U.S.C. 78q–1(b)(3)(F).

Rules (1) the governing law of agreements and other documents provided to FICC pursuant to the Rules; and (2) the affirmative undertakings that Members currently make in onboarding membership agreements.

By enhancing the clarity and transparency of the Rules, and allowing FICC to simplify the membership agreements and other documents, the proposed changes would allow Members to more efficiently and effectively conduct their business in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.[16]

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and would simplify the documentation that is provided to FICC by Members pursuant to the Rules. Therefore, the proposed changes would not affect FICC's operations or the rights and obligations of membership. As such, FICC believes the proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[17] of the Act and paragraph (f)[18] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2021–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2021–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2021–008 and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26070 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

[16] *Id.*

[17] 15 U.S.C 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93655; File No. SR–CBOE–2021–046]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Cboe Rule 5.4 and Make Corresponding Changes to Other Rules

November 23, 2021.

I. Introduction

On August 6, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow all complex orders to be quoted and executed in $0.01 increments.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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

Continued

proposed rule change was published for comment in the **Federal Register** on August 25, 2021.[4] The Commission received two comment letters regarding the proposal.[5] Cboe responded to the comments on September 23, 2021.[6] On September 28, 2021, pursuant to Section 19(b)(2) of the Act,[7] 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 approve or disapprove the proposed rule change.[8] On November 1, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.[9] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act [10] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Currently, Exchange Rule 5.4 provides that, except as provided in Exchange Rule 5.33, the minimum increment for bids and offers on complex orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one for equity and index options, and Index Combo orders, is $0.01 or greater, which the Exchange may determine on a class-by-class basis, and the legs may be executed in $0.01 increments. The rule further provides that the minimum increment for bids and offers on complex orders with any ratio less than one-to-three or greater than three-to-one for equity and index options (except for Index Combo orders) is the standard increment for the class pursuant to Exchange Rule 5.4(a), and the legs may be executed in the minimum increment applicable to the class pursuant to Exchange Rule 5.4(a).[11] The Exchange proposes to amend Exchange Rule 5.4(a) to allow complex orders with any ratio to be quoted in increments of $0.01 or greater, as determined by the Exchange on a class-by-class basis, and executed in $0.01 increments.

The Exchange states that if complex orders cannot be expressed in increments smaller than the increment for the class (such as $0.05), it may be difficult for brokers to obtain the desired prices for their customers' complex orders because the parties to a trade must perform complicated and time-consuming calculations to break down the orders into the required contract quantities and prices to fit within the constraint of executing the orders at a minimum increment other than $0.01.[12] In addition, the Exchange notes that the calculation process for larger-ratio complex orders is time-consuming because these orders generally are entered in large quantities with a large number of legs.[13] As a result, brokers executing larger-ratio complex orders on active trading days cannot be as efficient in representing other customer orders they are holding.[14] The Exchange states that the proposal to allow larger-ratio complex orders to be quoted and executed in $0.01 increments will provide market participants with flexibility in pricing their investment strategies and allow Trading Permit Holders (''TPHs'') to execute these orders more efficiently and at better prices for their customers.[15]

The Exchange notes that, in general, because fewer than one third of complex orders executed on the Exchange's trading floor have ratios greater than three-to-one, a significant majority of the complex orders traded on the Exchange are eligible to execute in pennies.[16] Accordingly, if the proposal increases the number of complex orders submitted with ratios greater than three-to-one (and thus the number of orders that may trade in pennies), the Exchange believes that any increase would represent a nominal increase in the volume that would be eligible to execute in pennies.[17]

Currently, the Exchange permits complex orders with any ratio less than one-to-three or greater than three-to-one to trade only on the Exchange's trading floor.[18] The Exchange proposes to allow these larger-ratio orders to be traded electronically, as well as in open outcry.[19] The Exchange states that electronic trading of larger-ratio complex orders will provide investors with additional flexibility in executing these orders and will increase the investment strategies available to investors who prefer to or solely trade electronically.[20]

The Exchange asserts that it is unlikely that market participants would submit orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one that is not a bona fide trading strategy solely for the purpose of trading in $0.01 increments.[21] The Exchange states that it is unlikely that other market participants would be willing to execute against an order that is not a bona fide trading strategy, thereby reducing the likelihood that a market participant would be able to execute such a strategy.[22] The Exchange further states that adding an extra leg to a large order to be able to improve the book by $0.01 would be unnecessary because such order could be executed in an AIM Auction in $0.01 increments.[23] In addition, the Exchange notes that these orders would be subject to review by the

the applicable number of legs (which number the Exchange determines on a class-by-class basis). The Exchange determines in which classes complex orders are eligible for processing. Unless the context otherwise requires, the term complex order includes stock-option orders and security future-option orders. For purposes of Rules 5.33 and 5.85(b)(1), the term ''complex order'' means a complex order with any ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00), an Index Combo order, a stock-option order, or a security future-option order. For the purpose of applying these ratios to complex orders comprised of legs for both mini-options and standard options, ten mini-option contracts represent one standard option contract. For the purpose of applying these ratios to complex orders comprised of legs for both micro-options and standard options, 100 micro-option contracts represent one standard option contract. *See* Cboe Rule 1.1.

[4] *See* Securities Exchange Act Release No. 92709 (August 19, 2021), 86 FR 47529 (''Notice'').

[5] *See* letter to Vanessa Countryman, Secretary, Commission, from Alanna Barton, General Counsel, BOX Exchange LLC, dated September 14, 2021 (''BOX Letter''); and letter from Mary Smith, dated August 19, 2021 (''Smith Letter''). Comments received regarding the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2021-046/srcboe2021046.htm*.

[6] *See* letter to Vanessa Countryman, Secretary, Commission, from Laura G. Dickman, Vice President and Associate General Counsel, Cboe Options, dated September 23, 2021 (''Exchange Response''). The Exchange Response is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2021-046/srcboe2021046.htm*.

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Securities Exchange Act Release No. 93159 (September 28, 2021), 86 FR 54780 (October 4, 2021). The Commission designated November 23, 2021, 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.

[9] Amendment No. 1 revises the proposal to provide rationale for allowing complex orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one to trade electronically; provide information regarding the number of additional contracts that would be permitted to trade in $0.01 increments under the proposal; and express the view that the rules of another options exchange do not clearly specify the minimum trading increment applicable to complex orders traded on that exchange's trading floor. Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboe-2021-046/srcboe2021046.htm*.

[10] 15 U.S.C. 78s(b)(2)(B).

[11] The minimum increment for bids and offers on complex orders in options on the S&P 500 Index (SPX) or on the S&P 100 Index (OEX and XEO), except for box/roll spreads, is $0.05 or greater, or any increment, which the Exchange may be determine on a class-by-class basis. *See* Cboe Rule 5.4(a).

[12] *See* Notice, 86 FR at 47530.

[13] *See* Exchange Response at 4.

[14] *See* Notice, 86 FR at 47530.

[15] *See id.* at 47530–1.

[16] *See* Amendment No. 1 at 4.

[17] *See id.*

[18] *See* Notice, 86 FR at 47529.

[19] *See id.* at n. 6.

[20] *See* Amendment No. 1 at 5.

[21] *See* Notice, 86 FR at 47531.

[22] *See id.*

[23] *See id.*

Exchange's regulatory division, which could determine that the submission of such orders was in violation of the Exchange's rules, including Exchange Rule 8.1, which prohibits TPHs from engaging in acts or practices inconsistent with just and equitable principles of trade.[24]

The proposal does not extend the complex order priority provisions applicable to complex orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one to complex orders with any ratio less than one-to-three or greater than three-to-one.[25] The proposal amends Exchange Rule 5.33(f)(2)(A)(v) to provide that a complex order that has any ratio less than one-to-three or greater than three-to-one will not execute at a net price that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer order on the Simple Book[26] without improving the BBO[27] of each component of the complex strategy with a Priority Customer order at the BBO.[28] As a result, a complex order with any ratio less than one-to-three or greater than three-to-one may be executed at a net debit or credit price only if each leg of the order betters the corresponding bid (offer) of a Priority Customer order(s) in the Simple Book.[29] Accordingly, the Exchange states that the complex order priority rules will continue to protect Priority Customer interest on the Simple Book.[30]

III. Summary of Comments and Exchange's Response

The Commission received two comment letters regarding the proposal.[31] One commenter states that the proposal would solely benefit high-speed traders and result in worse prices for retail traders due to decreased quotes.[32]

The Exchange states that the proposal is designed to increase the efficiency of trading larger-ratio, highly complex orders and is not intended to benefit high-speed traders.[33] The Exchange further states that the proposal has minimal relevance to high-speed traders, who generally participate in listed options trading as market makers rather than as brokers conducting agency businesses.[34] The Exchange concludes that the proposal ''will have minimal impact on either high-speed traders or retail traders (or on the simple market), as it is intended to increase the efficiency and precision available to brokers attempting to execute highly complicated yet bona-fide multi-leg option strategies on the Exchange, which strategies are not common among high-speed traders or retail traders.'' [35] In addition, the Exchange notes that the proposal is unrelated to quoting and that the increased number of complex orders that would be eligible for more flexible pricing under the proposal could increase the number of complex orders entered on the Exchange that may leg into the Simple Book, thereby increasing execution opportunities for resting customer orders.[36]

Another commenter states that, contrary to statements in the proposal, each component leg of s of a multi-leg Qualified Open Outcry Order (''QOO'') on the BOX Exchange LLC's (''BOX'') trading floor respects the minimum trading increment for the series (*e.g.,* $0.01, $0.05, $0.10).[37] The commenter further states that multi-leg QOO Orders do not meet the definition of Complex QOO Order and are treated like single-leg QOO Orders for purposes of execution and priority.[38]

In its response, the Exchange states that multiple TPHs who are also members of BOX informed the Exchange that multi-legged orders with ratios greater than three-to-one or less than one-to-three are executed regularly on BOX's trading floor in penny increments.[39] The Exchange also expressed the view that BOX's rules lack clarity regarding the increments applicable to QOO Orders that do not satisfy the definition of a complex order in BOX Rule 7240(a)(7).[40]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2021–046 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[41] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[42] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[43] which 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 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,'' [44] and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[45] The proposal would allow a complex order with any ratio less than one-to-three or greater than three-to-one to be quoted and executed in $0.01 increments, regardless of the trading increment for the class. Thus, the component series of a complex order with any ratio less than one-to-three or greater than three-to-one in a class that trades in $0.05 increments would be able to trade in $0.01 increments, while single-leg orders in those series would trade in $0.05 increments. The Commission believes that questions are raised as to whether this disparity in trading increments could disadvantage market participants trading single-leg orders in classes with a standard trading increment of $0.05 or $0.10.

[24] *See id.*

[25] *See* Notice, 86 FR at 47530.

[26] The Simple Book is the electronic book of simple orders and quotes maintained by the System, which single book is used during both the Regular Trading Hours and Global Trading Hours trading sessions. *See* Exchange Rule 1.1.

[27] The BBO is the best bid or offer disseminated on the Exchange.

[28] *See* Exchange Rule 1.1. Exchange Rule 5.33(f)(2)(A)(v) will continue to provide that a complex order that has any ratio equal to or greater than one-to-three and less than or equal to three-to-one, or an Index Combo order, will not execute at a net price that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy.

[29] *See* Notice, 86 FR at 47530.

[30] *See id.*

[31] *See supra* note 5.

[32] *See* Smith Letter.

[33] *See* Exchange Response at 1–2.

[34] *See id.* at 2.

[35] *Id.* at 3–4.

[36] *See id.* at 2.

[37] *See* BOX Letter at 1.

[38] *See id.*

[39] *See* Exchange Response at 4.

[40] *See id.* at 4–5. *See also* Amendment No. 1 at 6–7.

[41] 15 U.S.C. 78s(b)(2)(B).

[42] *Id.*

[43] 15 U.S.C. 78f(b)(5).

[44] *Id.*

[45] *See id.*

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provisions of the Act, or rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[46] any request for an opportunity to make an oral presentation.[47]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 21, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 4, 2022. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other issues raised by the proposed rule change raised under the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2021–046 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–CBOE–2021–046. The file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2021–046 and should be submitted by December 21, 2021. Rebuttal comments should be submitted by January 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25989 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

[46] 17 CFR 240.19b–4.

[47] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[48] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93669; File No. SR–DTC–2021–016]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Certain Revisions and Clarifications to the Rules

November 24, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to DTC's Rules, Bylaws and Organization Certificate (''Rules'') to (1) incorporate into the Rules the governing law of agreements and other documents provided to DTC pursuant to the Rules; (2) incorporate in the Rules the affirmative undertakings that Participants currently make in onboarding membership agreements; (3) clarify that Participants shall appoint a duly authorized representative in connection with their membership, and remove the requirement that DTC approve the form of power of attorney or resolutions of the Participant's board of directors that evidences such authorization; and (4) clarify DTC's ability to rely on electronic signatures on agreements and other documents provided to DTC pursuant to the Rules, as described in greater detail below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, *available at https://www.dtcc.com/legal/rules-and-procedures.* Unless otherwise indicated by the context, the term ''Participant'' as used herein includes the term ''Limited Participant.''

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DTC is proposing amendments that would clarify, simplify and improve the disclosures in the Rules, primarily related to onboarding and other membership documentation between DTC and its Participants. DTC, along with its affiliates, National Securities Clearing Corporation and Fixed Income Clearing Corporation, has recently completed a review of the templates of onboarding agreements and other documents that are provided to DTC in connection with a firm's application for membership, and the templates of agreements and documents Participants may provide to DTC during the course of their membership pursuant to the Rules. In connection with this review, DTC is proposing to make certain revisions and clarifications to the Rules.

More specifically, the proposed rule changes would (1) incorporate into the Rules the governing law of agreements and other documents provided to DTC pursuant to the Rules; (2) incorporate in the Rules the affirmative undertakings that Participants currently make in onboarding membership agreements; (3) clarify that Participants shall appoint a duly authorized representative in connection with their membership, and remove the requirement that DTC approve the form of power of attorney or resolutions of the Participant's board of directors that evidences such authorization; and (4) clarify DTC's ability to rely on electronic signatures on agreements and other documents provided to DTC pursuant to the Rules, as described in greater detail below.

Proposed Revisions to Rules Regarding Governing Law

DTC is proposing to revise Section 4 of Rule 1 (Definitions; Governing Law), which currently states that the Rules are governed by New York law.[6] The proposed change would revise Section 4 of Rule 1 to include a statement that agreements and other documents that are entered into between DTC and its Participants are also governed by New York law, unless otherwise expressly provided. Currently, agreements and other documents entered into between DTC and its Participants either include a governing law provision or are governed by New York law through the application of both Section 4 of Rule 1, which provides that the rights and obligations under the Rules are governed by New York law, and the DTC membership agreements, which provide that the Rules (including Section 4 of Rule 1) govern the matters and transactions between DTC and its Participants.

This proposed change would both clarify the governing law of the agreements and other documents entered into between DTC and its Participants pursuant to the Rules, and would allow DTC to simplify those documents by removing the governing law provisions in such documents.

Proposed Revisions To Incorporate Participant Undertakings Into the Rules

DTC is proposing to revise Section 1 of Rule 2 (Participants and Pledgees) to incorporate affirmative undertakings that Participants currently make in their onboarding membership agreements.[7] This section currently provides that an applicant for membership with DTC shall sign and deliver to DTC an agreement under which the applicant would agree to the affirmative undertakings that are listed in this Section 1 of Rule 2.[8] These undertakings include, for example, to abide by the Rules and be bound by all the provisions thereof, and to pay any amounts that become payable by the Participant to DTC pursuant to the Rules.[9]

To simplify and standardize the membership onboarding documentation, DTC is proposing to revise Section 1 of Rule 2 to state directly that Participants agree to each of the undertakings listed in that section. DTC would also make an identical revision to Rule 9(D) (Settling Banks) regarding the undertakings of Settling Banks. In connection with this proposed change, DTC would remove these undertakings from the template membership agreement, which already provides that Participants are bound by the Rules.

Proposed Revisions to Requirements Related to Participants' Authorized Representatives

DTC is proposing to revise Sections 1 and 2 of Rule 7 (Participant Representatives), which describes Participants' requirement to appoint an authorized representative in connection with their membership with DTC.[10] Currently, Section 1 of Rule 7 provides that a Participant may designate an authorized representative that is not either a general partner or an officer of the Participant, by either a power of attorney or resolutions of the Participant's board of directors, and requires such power of attorney and resolutions be in a form approved by DTC.[11] Section 2 of Rule 7 requires Participants to provide DTC with the signatures of individuals who are authorized representatives for purposes of conducting business with DTC.[12]

In order to simplify the onboarding membership requirements, DTC is proposing to amend Section 1 of Rule 7 to clarify that a Participant's representative must be duly appointed and authorized, and to remove references to a power of attorney or resolutions of the Participant's board of directors. The proposed change would also remove the requirement that DTC approve the form of power of attorney or resolutions of the Participant's board of directors that evidences the due authorization of that representative.

Finally, DTC is proposing to remove Section 2 of Rule 7, which includes the requirement that Participants provide DTC with the signatures of representatives who are authorized to conduct business with DTC.[13] In connection with this proposed change, DTC would renumber the remaining sections in Rule 7.

Proposed Revisions to Rules Regarding DTC's Reliance on Electronic Signatures

DTC is proposing to revise Rule 26, which is currently titled ''Facsimile Signatures'' and lists the circumstances in which DTC would rely on an electronic signature.[14] The proposed revision to this Rule 26 would rename the rule to remove the word ''Facsimile,'' and would also revise the rule to clarify that DTC may rely on an electronic signature with respect to any and all agreements and other documents delivered pursuant to the Rules. DTC would also remove reference to the circumstances in which it would accept an electronic signature, to make clear that DTC would do so in any circumstances. The proposed revisions would clarify and modernize the language in Rule 26, which still refers to outdated modes of electronic communication, such as telex, and would align the language in this Rule to language used in the New York Electronic Signatures and Records Act.[15]

[6] *Id.*

[7] Section 1 of Rule 2, *id.*

[8] *Id.*

[9] *See* Sections 1(a) and (d) of Rule 2, *id.*

[10] Sections 1 and 2 of Rule 7, *id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] N.Y. State Tech. Law § 304(2) (McKinney 2021).

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of DTC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.[16] DTC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes would clarify and improve the transparency of the Rules and would allow DTC to simplify the membership agreements and other documentation provided to it by Participants pursuant to the Rules.

More specifically, the proposed changes would make clarifications to the Rules regarding (i) Participants' duly authorized representatives in connection with their memberships; and (ii) DTC's ability to rely on electronic signatures on agreements and other documents provided to it pursuant to the Rules. The proposed changes would also update the Rules in order to allow DTC to simplify the onboarding and other membership agreements and documents by incorporating in the Rules (1) the governing law of agreements and other documents provided to DTC pursuant to the Rules; and (2) the affirmative undertakings that Participants currently make in onboarding membership agreements.

By enhancing the clarity and transparency of the Rules, and allowing DTC to simplify the membership agreements and other documents, the proposed changes would allow Participants to more efficiently and effectively conduct their business in accordance with the Rules, which DTC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, DTC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.[17]

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and would simplify the documentation that is provided to DTC by Participants pursuant to the Rules. Therefore, the proposed changes would not affect DTC's operations or the rights and obligations of membership. As such, DTC believes the proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[18] of the Act and paragraph (f)[19] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2021–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2021–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2021–016 and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26067 Filed 11–29–21; 8:45 am]

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[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] *Id.*

[18] 15 U.S.C 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93671; File No. SR–NSCC–2021–012]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Certain Revisions and Clarifications to the Rules

November 24, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules & Procedures (''Rules'') to (1) clarify defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks; (2) incorporate in the Rules the affirmative undertakings that Members currently make in onboarding membership agreements; (3) clarify that Members shall appoint a duly authorized representative in connection with their membership, and remove the requirement that NSCC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization; (4) clarify NSCC's ability to rely on electronic signatures on agreements and other documents provided to NSCC pursuant to the Rules; and (5) incorporate into the Rules the governing law of agreements and other documents provided to NSCC pursuant to the Rules, as described in greater detail below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC is proposing amendments that would clarify, simplify and improve the disclosures in the Rules, primarily related to onboarding and other membership documentation between NSCC and its Members. NSCC, along with its affiliates, The Depository Trust Company and Fixed Income Clearing Corporation, has recently completed a review of the templates of onboarding agreements and other documents that are provided to NSCC in connection with a firm's application for membership and the templates of agreements and documents Members may provide to NSCC during the course of their membership pursuant to the Rules. In connection with this review, NSCC is proposing to make certain revisions and clarifications to the Rules.

More specifically, the proposed rule changes would (1) clarify defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks; (2) incorporate in the Rules the affirmative undertakings that Members currently make in onboarding membership agreements; (3) clarify that Members shall appoint a duly authorized representative in connection with their membership, and remove the requirement that NSCC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization; (4) clarify NSCC's ability to rely on electronic signatures on agreements and other documents provided to NSCC pursuant to the Rules; and (5) incorporate into the Rules the governing law of agreements and other documents provided to NSCC pursuant to the Rules, as described in greater detail below.

Proposed Revisions To Clarify the Defined Terms Related to Settling Bank Agreements

NSCC is proposing to revise Rule 1 (Definitions and Descriptions) to clarify the defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks. Settling Banks and AIP Settling Banks are types of NSCC membership that undertake to perform settlement services on behalf of other Members.[6]

Currently, the definition of ''Settling Bank'' in Rule 1 states that these Members are party to both an ''Appointment of Settling Bank'' and ''Settling Bank Agreement,'' and the definition of ''AIP Settling Bank'' in Rule 1 states that these Members are party to both an ''Appointment of AIP Settling Bank'' and ''AIP Settling Bank Agreement,'' However, there are no separate definitions of the terms ''Appointment of Settling Bank,'' ''Settling Bank Agreement,'' ''Appointment of AIP Settling Bank'' or ''AIP Settling Bank Agreement.'' Furthermore, NSCC does not currently require these types of Members to submit separate documents to evidence an appointment and an agreement. Rather, under NSCC's current practice, Settling Banks and AIP Settling Banks are required to be party to an effective agreement, which includes both the appointment of the Settling Bank or AIP Settling Bank and their affirmative undertaking to perform settlement services for another Member that is also party to that agreement.

Therefore, NSCC is proposing to amend the definitions of Settling Bank and AIP Settling Bank in Rule 1 to refer only to a Settling Bank Agreement and to add a definition of ''Settling Bank Agreement'' to Rule 1, to clarify that this agreement includes both the appointment of the Settling Bank or AIP Settling Bank and their affirmative undertaking to perform settlement services for another Member that is also party to that agreement. The proposed rule change would clarify the definitions of these membership types and conform the description of their membership documentation requirements in the Rules to NSCC's current practice.

In connection with this proposed change and also to conform the Rules to NSCC's current practice, NSCC would also amend Rule 53 (Alternative Investment Product Services and Members) to refer to the Settling Bank

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, *available at https://www.dtcc.com/legal/rules-and-procedures*. NSCC has several types of membership with different access levels to services, each described in Rule 2, *id*. For ease of description, unless otherwise indicated by the context, the term ''Member'' is used to refer to all membership categories.

[6] Settling Bank and AIP Settling Bank membership types are described in Sections 2(ii)(f) and (i) of Rule 2, *id*.

Agreement among the required documentation to establish AIP Settling Sub-Accounts in Section 1(d) and would revise a reference to an ''AIP Settling Bank Agreement'' to refer to the proposed ''Settling Bank Agreement'' in Section 7(h).

Proposed Revisions To Incorporate Member Undertakings Into the Rules

NSCC is proposing to revise Section 1.E of Rule 2A (Initial Membership Requirements) to incorporate affirmative undertakings that Members currently make in their onboarding membership agreements.[7] This section currently provides that an applicant for membership with NSCC shall sign and deliver to NSCC an agreement under which the applicant would agree to the affirmative undertakings that are listed in this Section 1.E of Rule 2A.[8] These undertakings include, for example, to abide by the Rules and be bound by all the provisions thereof, and to pay any amounts that become payable by the Member to NSCC pursuant to the Rules.[9]

To simplify and standardize the membership onboarding documentation, NSCC is proposing to revise Section 1.E of Rule 2A to state directly that Members agree to each of the undertakings listed in that section. In connection with this proposed change, NSCC would remove these undertakings from the template membership agreement, which already provides that Members are bound by the Rules.

In connection with this proposed change, NSCC would also make identical revisions to statements within Section 1.E of Rule 2A regarding the undertakings of other membership types, including (i) footnotes 2 and 3 regarding Fund Members, (ii) a statement in subsection 1 that refers to undertakings of Members that are Municipal Securities Brokers' Brokers, (iii) a statement in subsection 2 that refers to the onboarding obligations of Third Party Administrator Members, Third Party Provider Members and Investment Manager/Agent Members, and (iv) a statement regarding the onboarding obligations of Settling Bank Only Members and Municipal Comparison Only Members.

Proposed Revisions to Requirements Related to Members' Authorized Representatives

NSCC is proposing to revise Section 2 of Rule 5 (General Provisions), which describes Members' requirement to appoint an authorized representative in connection with their membership with NSCC.[10] Currently, Section 2 of Rule 5 provides that a Member may designate an authorized representative that is not either a general partner or an officer of the Member by either a power of attorney or resolutions of the Member's board of directors, and requires such power of attorney and resolutions be in a form approved by NSCC.[11] Section 2 of Rule 5 also requires Members to provide NSCC with the signatures of individuals who are authorized representatives for purposes of conducting business with NSCC.[12]

In order to simplify the onboarding membership requirements, NSCC is proposing to amend Section 2 of Rule 5 to clarify that Members must appoint a duly authorized representative, and to remove references to a power of attorney or resolutions of the Member's board of directors. The proposed change would also remove the requirement that NSCC approve the form of power of attorney or resolutions of the Member's board of directors that evidences the due authorization of that representative. Finally, NSCC is proposing to remove the requirement that Members provide NSCC with the signatures of representatives who are authorized to conduct business with NSCC.[13]

Proposed Revisions to Rules Regarding NSCC's Reliance on Electronic Signatures

NSCC is proposing to revise Rule 32 (Signatures), which lists the circumstances in which NSCC would rely on an electronic signature.[14] The proposed revision to this Rule 32 would revise the rule to clarify that NSCC may rely on an electronic signature with respect to any and all agreements and other documents delivered pursuant to the Rules. In connection with this change, NSCC would also remove reference to the circumstances in which it would accept an electronic signature, to make clear that NSCC would do so in any circumstances. The proposed revisions would clarify and modernize the language in Rule 32, which still refers to outdated modes of electronic communication, such as telex, and would align the language in this Rule to language used in the New York Electronic Signatures and Records Act.[15]

Proposed Revisions to Rules Regarding Governing Law

NSCC is proposing to revise Section 1 of Rule 38 (Governing Law and Captions), which currently states that the Rules are governed by New York law.[16] The proposed change would revise Section 1 of Rule 38 to include a statement that all agreements and other documents that are entered into between NSCC and its Members are also governed by New York law, unless otherwise expressly provided. Currently, agreements and other documents entered into between NSCC and its Members either include a governing law provision or are governed by New York law through the application of both Section 1 of Rule 38, which provides that the rights and obligations under the Rules are governed by New York law, and the NSCC membership agreements, which provide that the Rules (including Section 1 of Rule 38) govern the matters and transactions between NSCC and its Members.

This proposed change would both clarify the governing law of the agreements and other documents entered into between NSCC and its Members pursuant to the Rules, and would allow NSCC to simplify those documents by removing the governing law provisions in such documents.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.[17] NSCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes would clarify and improve the transparency of the Rules and would allow NSCC to simplify the membership agreements and other documentation provided to it by Members pursuant to the Rules.

More specifically, the proposed changes would make clarifications to the Rules regarding (i) defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks; (ii) Members' duly authorized representatives in connection with their memberships; and (iii) NSCC's ability to rely on electronic signatures on agreements and other documents provided to it pursuant to the Rules. The proposed changes would also update the Rules in order to allow NSCC to simplify the onboarding and other

[7] Section 1.E of Rule 2A, *id.*

[8] *Id.*

[9] *See* Sections 1.E(e) and (h) of Rule 2A, *id.*

[10] Section 2 of Rule 5, *id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] N.Y. State Tech. Law 304(2) (McKinney 2021).

[16] *Supra* note 5.

[17] 15 U.S.C. 78q–1(b)(3)(F).

membership agreements and documents by incorporating in the Rules (1) the governing law of agreements and other documents provided to NSCC pursuant to the Rules; and (2) the affirmative undertakings that Members currently make in onboarding membership agreements.

By enhancing the clarity and transparency of the Rules, and allowing NSCC to simplify the membership agreements and other documents, the proposed changes would allow Participants to more efficiently and effectively conduct their business in accordance with the Rules, which NSCC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, NSCC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.[18]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and would simplify the documentation that is provided to NSCC by Members pursuant to the Rules. Therefore, the proposed changes would not affect NSCC's operations or the rights and obligations of membership. As such, NSCC believes the proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right to not respond to any comments received.

[18] *Id.*

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[19] of the Act and paragraph (f)[20] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2021–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2021–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2021–012 and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26074 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93662; File No. SR–NASDAQ–2021–094]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Post-Only Quote Configuration Risk Protection

November 23, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Rules at Options 3, Section 15, Risk Protections, to adopt an optional Post-Only Quoting Protection for NOM Market Makers.

The Exchange also proposes to correct certain minor technical amendments within Options 1, Section 1, ''Definitions,'' and Options 3, Section 7, ''Types of Orders and Order and Quote Protocols.'' [3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposal amends NOM's Rules at Options 3, Section 15, Risk Protections, to codify an optional Post-Only Quoting Protection for NOM Market Makers.[4] This optional risk protection allows NOM Market Makers to prevent their quotes from removing liquidity from the Exchange's order book upon entry. The Exchange also proposes to correct certain minor technical amendments within Options 1, Section 1, ''Definitions,'' and Options 3, Section 7, ''Types of Orders and Order and Quote Protocols.'' [5]

Specifically, this optional risk protection would be codified within Options 3, Section 15(c)(3). With this risk protection, NOM Market Makers may elect to configure their SQF [6] or QUO [7] protocols to prevent their quotes from removing liquidity (''Post-Only Quote Configuration''). This Post-Only Quote Configuration re-prices or cancels a NOM Market Maker's quote that would otherwise lock or cross any resting order [8] or quote on the Exchange's order book upon entry. The Exchange notes that this functionality does not apply during an Opening Process [9] because the order book is established once options series are open for trading.

Participants may elect whether to re-price or cancel their quotes with this functionality. When configured for re-price, quotes are re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers). Notwithstanding the aforementioned, and as is the case today, if a quote with a Post-Only Quote Configuration would not lock or cross an order on the System but would lock or cross the NBBO, the quote will be handled pursuant to Options 3, Section 4(b)(6). When configured for cancel, Participants will have their quotes returned whenever the quote would lock or cross the NBBO or be placed on the book at a price other than its limit price.

This optional risk protection enables NOM Market Makers to better manage their risk when quoting on NOM. Today, BOX Exchange LLC (''BOX''),[10] NYSE Arca, Inc. (''NYSE Arca''),[11] and MIAX Emerald, LLC (''MIAX Emerald'') [12] have similar functionality. BOX does not permit Market Maker's quotes to take liquidity and will reject the quote. Other options markets, unlike BOX, continue to permit their market makers to add or remove liquidity from the order book.[13] NYSE Arca and MIAX Emerald will re-price quotes one minimum price variation (''MPV'') to avoid the quote from trading as a liquidity taker against the resting order. The Exchange's proposal permits a NOM Market Maker a choice as to whether to cancel or re-price its quote when using the Post-Only Quote Configuration. Unlike NYSE Arca and MIAX Emerald, the Exchange would re-price $.01 below the current low offer (for bids) or above the current best bid (for offers) and display the quote at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers).

Of note, today, all NOM participants may utilize the Post-Only Order type.[14]

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[3] Options 3, Section 7 describes the order types available on NOM as well as the protocols through which market participants may submit either orders or quotes into NOM.

[4] Today, NOM offers this functionality which is not currently codified in its rules. Today, no Participant has configured their ports to utilize this feature.

[5] Options 3, Section 7 describes the order types available on NOM as well as the order and quote protocols available to submit orders and quotes into NOM.

[6] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or-Cancel Orders into and from the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Options 3, Section 7(e)(1)(B).

[7] ''Quote Using Orders'' or ''QUO'' is an interface that allows Market Makers to connect, send, and receive messages related to single-sided orders to and from the Exchange. Order Features include the following: (1) Options symbol directory messages (*e.g.,* underlying); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. Orders submitted by Market Makers over this interface are treated as quotes. Market Makers may only enter interest into QUO in their assigned options series. *See* Options 3, Section 7(e)(1)(D) as proposed to be amended herein.

[8] This would include any re-priced orders as described in Options 3, Section 5(d), any re-priced quotes as described in Options 3, Section 4(b)(6), Post-Only Orders, as described in Options 3, Section 7(a)(9), and Price Improving Orders, as described in Options 3, Section 7(a)(5) and Options 3, Section 5(c). Post-Only Orders and Price Improving Orders may re-price.

[9] The Exchange's Opening Process is described at Options 3, Section 8.

[10] BOX Rules provide, ''Notwithstanding Rule 100(a)(56), all quotes and quote updates on BOX after the opening are liquidity adding only. Specifically, after the Opening Match pursuant to Rule 7070, a Market Maker's quote will not execute against a resting order or quote on the BOX Book. If an incoming quote is marketable against the BOX Book and will execute against a resting order or quote, it will be rejected.'' *See* BOX IM–8050–3. *See also* Securities Exchange Act Release No. 79311 (November 15, 2016), 81 FR 83322 (November 21, 2016) (SR–BOX–2016–45) (Order Approving a Proposed Rule Change To Amend the Treatment of Quotes To Provide That All Quotes on BOX Are Liquidity Adding Only).

[11] NYSE Arca permits a market maker to optionally designate a quote as ''Add Liquidity Only.'' *See* NYSE Arca Rule 6.37A–O(a)(3)(B).

[12] *See* MIAX Emerald Rule 517(a)(1)(i).

[13] Miami International Securities Exchange LLC (''MIAX'') permits its market makers to add and remove liquidity from the order book. *See* MIAX's Fee Schedule which delineates Maker and Taker pricing. Nasdaq ISE, LLC (''ISE'') also permits market makers to add and remove liquidity from the order book. *See* ISE's Pricing Schedule at Options 7.

[14] ''Post-Only Order'' is an order that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the

Below are some examples of the Post-Only Quote Configuration functionality as well as an example of re-pricing of a Price Improving Order.[15]

Re-Priced Price Improving Order—Penny Interval Program Display and Execution Example—Non-Penny Interval Program (Options 3, Section 7(a)(5))

- Non-Penny Interval Program MPV in open trading state
- Market Maker A quote $0.90 (10) × $1.00 (10)
- ABBO $0.85 × $1.05
- Firm A sends Price Improving Order to buy 5 contracts @$0.93
  - Price Improving Order displays $0.90 bid, which now shows (15 quantity)
- Order arrives to sell 10 contracts @ $0.90
  - 5 contracts execute with Firm A @ $0.93
  - 5 contracts execute with Market A @$0.90

In this example, the inbound order received price improvement as a result of the available non-displayed interest on the order book.

Re-Priced Post-Only Order—Penny Interval Program Display and Execution Example—Non-Penny Interval Program (Options 3 Section 7(a)(9))

- Non-Penny Interval Program MPV in open trading state
- Market Maker A quote $0.95 (10) × $1.00 (10)
- ABBO $0.85 × $1.05
- Firm A sends Post-Only Order to buy 5 contracts @$1.00
  - Post-Only Order re-prices on order book to $0.99
  - Displays on order book @$0.95 (bid), which now shows (15 quantity)
- Order to sell 10 contracts arrives @ $0.95
  - 5 contracts execute with Firm A @ $0.99
  - 5 contracts execute with Market A @$0.95

In this example, the inbound order received price improvement as a result of the available non-displayed interest on the order book.

Re-Priced Post-Only Quote—Penny Interval Program Display and Execution Example—Non-Penny Interval Program (Options 3 Section 7(a)(9))

- Non-Penny Program MPV in open trading state
- Market Maker A quote $0.95 (10) × $1.00 (10)
- ABBO $0.85 × $1.05
- Market Maker B (configured at the badge level for Post-Only and selection of re-price upon quote) quote arrives 1.00 (5) × $1.05 (5)
  - Bid side quote re-prices on order book to $0.99
  - Displays on order book @$0.95 (bid), which now shows (15 quantity)
  - Offer side quote books and displays at $1.05
- Order to sell 10 contracts arrives @ $0.95
  - 5 contracts execute with Market Maker B @$0.99
  - 5 contracts execute with Market A @$0.95

In this example, the inbound order received price improvement as a result of the available non-displayed interest on the order book.

Options 3, Sections 1 and 7

The Exchange proposes to correct certain minor technical amendments within Options 1, Section 1, ''Definitions,'' and Options 3, Section 7, ''Types of Orders and Order and Quote Protocols.''

First, the Exchange proposes to update a citation within Options 3, Section 7(a)(9) which describes the Post-Only Order. The citation to Options 3, Section 22(b)(3)(C) is incorrect. The Exchange proposes to replace this citation with Options 3, Section 5(b)–(d)[16] which describes re-pricing for locked and crossed quotes.

Second, the Exchange proposes to amend the term ''Nasdaq Options Market Maker'' or ''Options Market Maker'' within Options 1, Section 1, ''Definitions.'' Specifically, this term within Options 1, Section 1(a)(27) describes an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Options 2 of these Rules. The Exchange proposes to add ''Market Maker'' as an alternative term for a Nasdaq Options Market Maker.

Third, the Exchange proposes to amend the term ''NOM Market Makers'' within Options 3, Section 7(e)(1)(D) which describes the ''Quote Using Orders'' or ''QUO'' quote protocol. The Exchange proposes to replace the term ''NOM Market Makers'' with ''Market Makers'' as proposed to be defined within Options 1, Section 1(a)(27).[17] The Exchange believes utilizing ''Market Makers'' in addition to ''Nasdaq Options Market Maker'' and ''Options Market Maker'' will conform the use of that term throughout the Rulebook.

Implementation

The Exchange proposes to implement this functionality prior to June 30, 2022.

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order will be re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Options 3, Section 5(b)–(d). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening will be eligible for execution during the opening cross and will be processed as per Options 3, Section 8. Post-Only Orders received after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel. (e) Entry and Display of Orders and Quotes. Participants may enter orders and quotes into the System as specified below. *See* Options 3, Section 7(a)(9).

[15] ''Price Improving Order'' is an order to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders. *See* Options 3, Section 7(a)(5).

[16] Options 3, Section 5(b)–(d) provides,

''(b) NBBO Price Protection. Orders, other than Intermarket Sweep Orders (as defined in Rule Options 5, Section 1(8) will not be automatically executed by the System at prices inferior to the NBBO (as defined in Options 5, Section 1(10)). There is no NBBO price protection with respect to any other market whose quotations are Non-Firm (as defined in Options 5, Section 1(11)).

(c) The System automatically executes eligible orders using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been repriced pursuant to subsection (d) below. The contract size associated with Displayed Price Improving Orders to buy (sell) are displayed at the MPV below (above) the price of the Price Improving Order. Price Improving Orders will not be permitted to create a locked or crossed market or to cause a trade through violation.

(d) Trade-Through Compliance and Locked or Crossed Markets. An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or cross market violation or would cause a trade-through violation, it will be re-priced to current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.''

[17] The term ''Nasdaq Options Market Maker'' or ''Options Market Maker'' mean an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Options 2 of these Rules. *See* Options 3, Section 1(a)(27).

The Exchange will issue an Options Trader Alert to Participants specifying the date of implementation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enhancing the risk protections available to NOM Market Makers. The proposal also promotes the policy goals of the Commission which has encouraged execution venues, exchanges, and non-exchanges alike, to enhance risk protection tools and other mechanisms to decrease risk and increase stability. This proposal is similar to functionality currently on BOX, NYSE Arca, and MIAX Emerald.[20]

The Exchange's proposal to amend Options 3, Section 15, Risk Protections, to codify new paragraph (c)(3) to permit NOM Market Makers to prevent their quotes from removing liquidity from the Exchange's order book is consistent with the Act for several reasons. While NOM Market Makers may manage their risk by utilizing the Post-Only Quote Configuration to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on the NOM order book upon entry, there are also downstream benefits to market participants. Re-priced interest on the order book provides price improvement for market participants that interact with that non-displayed interest that is priced better than the NBBO. For example, a Post-Only Order may re-price to $.01 below the current low offer (for bids) or above the current best bid (for offers) and is displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers) the result is that there is better-priced non-displayed interest available on the order book. Market participants are entitled to the better-priced interest when they interact with the re-priced Post-Only Order on the order book. Additionally, the benefits of enhanced risk protections flow downstream to counterparties both within and away from the Exchange, thereby increasing systemic protections as well.

The proposed risk protection allows NOM Market Makers the ability to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on NOM's order book upon entry, thereby protecting investors and the general public as NOM Market Makers transact a large number of orders on the Exchange and bring liquidity to the marketplace. NOM Market Makers would utilize the proposed risk protection to avoid unexpectedly taking liquidity with non-displayed, non-transparent interest[21] on the order book. As a result of taking liquidity, NOM Market Makers would incur a taker fee that may impact the NOM Market Maker's ability to provide liquidity and meet quoting obligations. NOM Market Makers are required to add liquidity on NOM and, in turn, are rewarded with lower pricing[22] and enhanced allocations.[23] Specifically, the risk protection would permit NOM Market Makers to add liquidity only and avoid removing non-displayed interest on the order book thereby maximizing the benefit of their quoting to bring liquidity to NOM by allowing NOM Market Makers to provide as much liquidity as possible, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. There is no impact to other market participants by introducing this Post-Only Quote Configuration as other non-Market Makers may continue to utilize the Post-Only Order functionality and this functionality will continue to benefit downstream counterparties, both within and away from the Exchange, who may interact with NOM's non-displayed order book and thereby interact with order flow that is priced better than the NBBO. Also, other market participants may interact with the liquidity provided by NOM Market Makers.

Of note, NOM does not offer auction functionality. An auction mechanism may interact adversely with Post-Only Orders or quotes with a Post-Only Quote Configuration that are re-priced in $0.01 increments and displayed at minimum price variation increments. In this example, the inbound auction would reject against the non-displayed Post-Only Order or quote with a Post-Only Quote Configuration if NOM were to have an auction mechanism. NOM has no such auctions and, as shown in the examples described herein, market participants may access any non-displayed liquidity, resulting in price improvement for the market participant.

Unlike other market participants, NOM Market Makers have certain obligations on the market. NOM Market Makers are required to provide continuous two-sided quotes on a daily basis[24] and are subject to various obligations associated with providing liquidity on the market.[25] NOM Market Makers are the sole liquidity providers on the Exchange and, therefore, are offered certain quote risk protections noted within Options 3, Section 15 to allow them to manage their risk more effectively.[26] The proposed Post-Only Quote Configuration is another risk protection afforded to NOM Market Makers to assist them in managing their risk while continuing to comply with their obligations. The Exchange notes that enhancing the ability of NOM Market Makers to add liquidity and avoid taking liquidity from the order book promotes just and equitable principles of trade on NOM and protects investors and the public interest, thereby enhancing market structure by allowing NOM Market Makers to add liquidity only. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by NOM Market Makers. Also, an increase in the activity of NOM Market Makers in turn facilitates tighter spreads.

Finally, today, all Participants may submit Post-Only Orders.[27] Offering NOM Market Makers the ability to configure their quotes as Post-Only will allow all market participants on NOM to enter interest with a Post-Only designation.

Options 3, Sections 1 and 7

The Exchange proposal to correct certain minor technical amendments within Options 1, Section 1, ''Definitions,'' and Options 3, Section 7, ''Types of Orders and Order and Quote Protocols'' is consistent with the Act as updating the citation within Options 3, Section 7(a)(9) which describes the Post-Only Order, amending the term ''Nasdaq Options Market Maker'' or ''Options Market Maker'' within Options 1, Section 1, ''Definitions,'' and replacing the term ''NOM Market Makers'' within Options 3, Section 7(e)(1)(D) which describes the ''Quote Using Orders'' or ''QUO'' quote protocol with ''Market Makers'' as proposed to be defined within Options 3, Section 1(a)(27) will bring greater clarity to these rules. The

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* notes 10–12 above.

[21] *See* note 8 above.

[22] *See* Options 7, Section 2.

[23] *See* Options 3, Section 10.

[24] *See* NOM Options 2, Section 5(d).

[25] *See* NOM Options 2, Section 4.

[26] Options 3, Section 15(c) describes the Anti-Internalization and Quotation Adjustments Protections that are available today to NOM Market Makers.

[27] *See* Options 3, Section 7(a)(9).

Exchange believes utilizing ''Market Makers'' in addition to ''Nasdaq Options Market Maker'' and ''Options Market Maker'' will conform the use of that term throughout the Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, rather, this proposal provides NOM Market Makers with the opportunity to continue to avail themselves of functionality that currently on BOX, NYSE Arca, and MIAX Emerald.[28]

The proposal does not impose a burden on inter-market competition, because Participants may choose to become market makers on a number of other options exchanges, which may have similar but not identical features. The Post-Only Quote Configuration functionality will continue to benefit downstream counterparties, both within and away from the Exchange, who may interact with NOM's non-displayed order book and thereby interact with order flow that is priced better than the NBBO.

The proposal does not impose a burden on intra-market competition. Today, all Participants may submit Post-Only Orders and receive similar treatment for their orders. Offering NOM Market Makers the ability to configure their quotes as Post-Only will allow all market participants on NOM to enter interest with a Post-Only designation.

The proposed risk protection allows NOM Market Makers the ability to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on NOM's order book upon entry, thereby protecting investors and the general public as NOM Market Makers transact a large number of orders on the Exchange and bring liquidity to the marketplace. NOM Market Makers are required to add liquidity on NOM and, in turn, are rewarded with lower pricing [29] and enhanced allocations.[30] Specifically, the risk protection would permit NOM Market Makers to add liquidity only and avoid removing non-displayed interest on the order book thereby maximizing the benefit of their quoting to bring liquidity to NOM by allowing NOM Market Makers to provide as much liquidity as possible. Unlike other market participants, NOM Market Makers have certain obligations on the market. NOM Market Makers are required to provide continuous two-sided quotes on a daily basis [31] and are subject to various obligations associated with providing liquidity on the market.[32] NOM Market Makers are the sole liquidity providers on the Exchange and, therefore, are offered certain quote risk protections noted within Options 3, Section 15 to allow them to manage their risk more effectively.[33] The proposed Post-Only Quote Configuration is another risk protection afforded to NOM Market Makers to assist them in managing their risk while continuing to comply with their obligations.

Options 3, Sections 1 and 7

The Exchange proposal to correct certain minor technical amendments within Options 1, Section 1, ''Definitions,'' and Options 3, Section 7, ''Types of Orders and Order and Quote Protocols'' does not impose an undue burden on competition as updating the citation within Options 3, Section 7(a)(9) which describes the Post-Only Order, amending the term ''Nasdaq Options Market Maker'' or ''Options Market Maker'' within Options 1, Section 1, ''Definitions,'' and replacing the term ''NOM Market Makers'' within Options 3, Section 7(e)(1)(D) which describes the ''Quote Using Orders'' or ''QUO'' quote protocol with ''Market Makers'' as proposed to be defined within Options 3, Section 1(a)(27) will bring greater clarity to these rules. The Exchange believes utilizing ''Market Makers'' in addition to ''Nasdaq Options Market Maker'' and ''Options Market Maker'' will conform the use of that term throughout the Rulebook.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [34] and subparagraph (f)(6) of Rule 19b–4 thereunder.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–094 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2021–094. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[28] *See* notes 10–12 above.

[29] *See* Options 7, Section 2.

[30] *See* Options 3, Section 10.

[31] *See* NOM Options 2, Section 5(d).

[32] *See* NOM Options 2, Section 4.

[33] Options 3, Section 15(c) describes the Anti-Internalization and Quotation Adjustments Protections that are available today to NOM Market Makers.

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–094 and should be submitted on or December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25992 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93668; File No. SR–ICEEU–2021–015]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures

November 24, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2021, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to adopt a new Counterparty Credit Risk Policy (the ''CC Risk Policy'') and a new Counterparty Credit Risk Procedures (the ''CC Risk Procedures'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to adopt the CC Risk Policy that would consolidate the Clearing House's overall policies for monitoring counterparty credit risk. ICE Clear Europe is also proposing to adopt the CC Risk Procedures that would consolidate and provide further detail as to the application of the Clearinghouse's policies for monitoring counterparty credit risk, in accordance with the requirements of the ICE Clear Europe Rules. Certain components of the CC Risk Policy and the CC Risk Procedures would replace components of ICE Clear Europe's current Unsecured Credit Limits Procedures and Capital to Margin Policy (as applicable, explained further below), which would both be retired. References to the Unsecured Credit Limits Procedures in other ICE Clear Europe documents would be revised in due course to reference the CC Risk Policy or the CC Risk Procedures, as applicable. The adoption of the CC Risk Policy and CC Risk Procedures is intended to generally reflect and document on a consolidated basis the Clearing House's existing policies and practices relating to counterparty credit risk management, as well as provide certain updates to current Clearing House practices, which are not intended to be material. Further explanations are provided below.

I. Counterparty Credit Risk Policy

The CC Risk Policy would define Counterparty Credit Risk and set out the Clearing House's objectives of minimizing the risk of being materially undercollateralized as a result of a Clearing Member (''CM'') default or realizing a material loss due to a Financial Service Provider (''FSP'') default.

Under the policy, the Clearing House classifies prospective CM's according to risk and sets credit eligibility criteria for prospective CMs and FSPs in order to check financial stability. Prospective CMs and FSPs are assessed against such criteria during onboarding. Existing CMs and FSPs are reviewed against such criteria at least annually.

The CC Risk Policy would describe ICE Clear Europe's counterparty rating system, which calculates a credit score that represents a counterparty's credit quality, and together with the exposure is used to identify the combination of the likeliness of default and heightened risk in a counterparty's portfolio of risk with ICE Clear Europe. Credit scores would be calculated by the model or, for FSPs (as provided in the CC Risk Procedures), a combination of Minimum External Rating requirements and exposure limits. See Section II below for more information. Depending on the risk classification, Counterparties may be subject to additional monitoring and potentially mitigating actions by the Clearing House.

The CC Risk Policy also would describe ICE Clear Europe's counterparty risk monitoring processes, which are based on a combination of continuous monitoring and additional counterparty risk reviews, tailored to the relationships and obligations of each type of counterparty. The new policy (and related procedures) provide further detail as to the content and frequency of such reviews, as well as distinguish how such reviews would be performed with respect to high risk counterparties. Specifically, the amendments would provide that all counterparties are monitored continuously through counterparty rating system scores, the Clearing House watch list and exposure limits. The Clearing House also performs Counterparty Risk Reviews on higher risk counterparties. Triggers for reviews are (i) a counterparty being added to the watch list, and (ii) there being concerns about the stability of a counterparty. Periodically, lower risk counterparties are subject to Counterparty Risk Reviews, such that all counterparties are subject to a risk review at least once every five years. (As explained further in Section II below, the CC Risk Procedures would require the Clearing House to perform a Counterparty Risk Review on CMs more frequently, at least once every four years.) These aspects of the Policy are generally consistent with, and will replace, the Unsecured Credit Limits Procedures.

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The CC Risk Policy also would address exposure limits and monitoring. As described in the policy, the Clearing House monitors its uncollateralized exposure to each CM (assuming the CM were to default) at least daily against exposure limits. The Clearing House also monitors a CM's initial margin relative to its capital at least daily against threshold limits. If an exposure limit or threshold limit is breached, then the Clearing House would take mitigating actions to lower the exposure (such as requiring additional margin or requiring the CM to reduce its positions under the Rules). This aspect of the policy would replace existing provisions in the Capital to Margin Policy. Consistent with current practice, monitoring of the capital to margin ratio will apply to both CDS CMs [3] and F&O CMs. With respect to F&O CMs, the capital-to-margin approach is being revised to eliminate the use of two separate ratios based on house and customer margin, respectively, and will continue using a single combined margin ratio, which ICE Clear Europe believes is more representative of the overall risk. Certain aspects of the Capital to Margin Policy relating to shortfall margin, while not included in the CC Risk Policy and CC Risk Procedures, are already covered by the Clearing House's F&O Risk Procedures. As such, those provisions of the Capital to Margin Policy are not necessary and can be retired. A copy of the F&O Risk Procedures is set forth in Exhibit 3.

The CC Risk Policy would also describe the Clearing House's monitoring of limits with respect to FSPs. ICE Clear Europe monitors its overnight unsecured cash exposure to FSPs at least daily against exposure limits. If an exposure limit is breached, then the Clearing House would take mitigating actions to reduce its exposure (such as moving cash to different FSPs or investing cash in securities). These provisions generally would replace provisions of the Clearing House's Unsecured Credit Limits Procedures.

Finally, the policy would address the Clearing House's document governance and exception handling processes, which are similar to those of other ICE Clear Europe policies. Specifically, the document owner would be responsible for maintaining up-to-date documents and reviewing documents in accordance with the Clearing House's governance processes. The document owner would be required to report material breaches or unapproved deviations to the Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who would together determine if further escalation should be made to relevant senior executives, the Board, or competent authorities. Exceptions to the CC Risk Policy would be approved in accordance with ICE Clear Europe's governance process for approval of changes to the CC Risk Policy.

II. CC Risk Procedures

The CC Risk Procedures supplement the CC Risk Policy with further detail about procedures for monitoring of counterparty credit risk. The CC Risk Procedures also would support certain aspects of the existing Clearing House Liquidity and Investment Management Policy and Investment Procedures. The criteria and principles set out in the CC Risk Procedures as well as in the CC Risk Policy are implemented in further operational detail in the Counterparty Risk Parameters and Reviews. The Counterparty Risk Parameters and Reviews are set forth in Exhibit 3.

The CC Risk Procedures would address the credit eligibility criteria for assessing the financial stability of prospective counterparties during the onboarding process and existing counterparties on at least an annual basis. Under the CC Risk Procedures, the Clearing House would produce a credit recommendation based on financial and qualitative information concerning prospective CMs and may propose approaches to mitigating credit risk (including increased buffer margin or increased capital, among other steps).

The CC Risk Procedures would set out in further detail the credit scoring process known as Counterparty Rating System (''CRS''), including the elements considered in producing such scoring, which include financial information specific to the counterparty and qualitative operational and conduct information concerning the counterparty. The CRS score is updated at least quarterly based on the latest financial statements. Material changes in the CRS score for a counterparty would be reviewed by the Clearing House.

ICE Clear Europe ranks CMs by their CRS score in order to identify those with lower relative credit quality that may require further examination to determine whether additional actions are necessary to mitigate credit risk. CMs with the weakest classifications, as well as all other CMs linked to such CMs by a common owner with a controlling stake in the entities, may be added to the watch list. The CC Risk Procedures would outline watch list monitoring as well as procedures for removing CMs from the watch list. The CC Risk Procedures would also outline the actions the Clearing House may take to reduce exposure to counterparties on the watch list under the Rules, including requiring additional or different forms of margin, additional capital or reduction of positions.

The CC Risk Procedures would also describe in further detail the ongoing continuous counterparty monitoring and trigger-based counterparty risk review processes under the CC Risk Policy, as discussed above. The CC Risk Procedures would provide for trigger-based reviews to be conducted on higher risk counterparties and additional periodic reviews on lower risk counterparties and prospective new CMs. Reviews are tailored to the relationship and obligation of the counterparty, and covers such matters as capital metrics, credit scores, financials, business description, ownership structure and risks to the Clearing House.

The CC Risk Procedures would also describe the Clearing House's procedures for setting exposures and limits for CMs and FSPs. For CMs, exposure is monitored daily against exposure limits for each CM using the uncollateralised stress loss (''USL'') as a proxy for the exposures. The procedures would address the Clearing House's processes for managing breaches of CM exposure limits. Where exposure to a CM exceeds the limit, the mitigating actions under the Rules that the Clearing House could take include (i) requiring CMs to post additional collateral to meet a ''buffer'' margin, (ii) requiring CMs to reduce their positions, thereby reducing their initial margin requirements, and (iii) requiring the CM to increase its capital or to implement a parental guarantee or subordinated debt to increase the exposure limit.

The procedures also address the monitoring of the margin to capital ratio for each CM. The Clearing House, for each CM and on each business day, monitors whether the size of a CM's positions are large relative to the CM by monitoring the ratio of their total margin to their capital (known as the margin to capital ratio). When a CM's margin to capital ratio is above a certain threshold, the Clearing House would investigate the breach in order to understand its cause. If the margin to capital ratio over a period of time is above the threshold, then ICE Clear Europe would take mitigating actions including (i) enhanced monitoring of the CM to assess whether the increased ratio is temporary, (ii) requiring CMs to reduce

[3] Application of the current capital-to-margin ratio for CDS Clearing Members is not addressed in the Capital to Margin Policy but in existing CDS risk documentation.

positions leading to a reduction in their initial margin, and (iii) requiring the CM to increase its capital or to implement a parental guarantee or subordinated debt to increase the exposure limit. This aspect of the CC Risk Procedures replaces (but does not change the substance of) the provisions of the Capital to Margin Policy, which would be retired.

The procedures also address monitoring of ''tiering'' concentration with respect to CM clients, which is intended to identify the risk from clients of a CM that could cause the default of the CM. The Clearing House periodically identifies clients of a CM whose initial margin constitutes more than a defined threshold of all client initial margin at that CM. The Clearing House may request additional information from the CM with respect to its risk management for such clients or take other risk mitigation actions as the Clearing House determines appropriate.

The procedures also address limits set for issuers of collateral. With respect to issuers of collateral, the Clearing House will set an overall limit with sub-limits for CM collateral, Treasury (reverse repo and other collateral) and Finance (investment of the Clearing House's own capital and Skin-in-the-Game). The overall limit will equal the sum of the sub-limits and can be borrowed between departments. This provision represents an enhancement to the Clearing House's existing policies and practices relating to exposure limits to address risk across different departments. If a limit is breached, ICEU may reach out to CMs for the replacement of collateral or reduce exposures to FSPs as the case may be.

The CC Risk Procedures would also address the Clearing House's procedures for setting exposures and limits for FSPs, including the roles and responsibilities of the Clearing House's credit team and its treasury team. This aspect of the CC Risk Procedures replaces (but does not change the substance of) the provisions of the Clearing House's Unsecured Credit Procedures, which would be retired. Detail would be provided regarding the allocation and monitoring of unsecured credit limits with respect to FSPs, including the minimum requirements for such FSPs and how the Clearing House allocates such limits based on the capital of the FSP and other exposures of the Clearing House to the FSP. The section would also outline ICE Clear Europe's mitigating responses where exposure to an FSP breaches the unsecured cash limit, including the allocating of unsecured cash to different FSPs, securing the cash exposure, and escalating material breaches as described in the Parameters.

Finally, the CC Risk Procedures would detail ICE Clear Europe's document governance and exception handling procedures, which would be the same as for the CC Risk Policy, described in Part I hereof. The Clearing House's Documentation Governance Schedule is attached [sic] in Exhibit 3.

As discussed above, since the CC Risk Policy and CC Risk Procedures cover the same substance as the Unsecured Credit Limits Procedures and Capital to Margin Policy, those documents would be retired.

(b) Statutory Basis

ICE Clear Europe believes that the CC Risk Policy and the CC Risk Procedures are consistent with the requirements of Section 17A of the Act[4] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The CC Risk Procedures and CC Risk Policy are designed to more clearly document and consolidate certain of the Clearing House's practices with respect to the management of counterparty credit risk, including both the risk of losses resulting from defaulting Clearing Members' and losses resulting from the default of other Financial Service Providers to the Clearing House. They would clearly describe the processes, controls and escalations with respect to the ongoing testing, monitoring and reviewing of counterparty credit risk, and the mitigation steps the Clearing House can take where risk in excess of limits is identified. The proposed documents thus enhance the overall risk management of the Clearing House and promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The new CC Risk Policy and CC Risk Procedures are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The aspects of the CC Risk Policy and CC Risk Procedures that relate to counterparty credit risk for FSPs will also help manage the risk of the cash held by the Clearing House from CMs and their customers, and thus enhance the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).[6]

The CC Risk Policy and the Risk Procedures are also consistent with relevant provisions of Rule 17Ad–22. Rule 17Ad–22(e)(3)(i)[7] provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] maintain a sound risk management framework that'' among other matters identifies, measures, monitors and manages the range of risks that it faces. The CC Risk Policy and the CC Risk Procedures are intended to document the Clearing House's policies and practices for monitoring and reviewing counterparty credit risk and related exposures, through clear descriptions of such policies and processes, as well as delineation of responsibilities and potential response to exposures exceeding limits. The documents would thus strengthen the management of potential counterparty risks, and risk management more generally. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(i).[8]

Rule 17Ad–22(e)(6)(i)[9] provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] cover [. . .] its credit exposures to its participants by establishing a risk-based margin system that, at a minimum,[. . .] considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.'' The proposed CC Risk Procedures provide descriptions of mitigating actions the Clearing House would take with respect higher-risk counterparties for which credit exposure may breach ICE Clear Europe's exposure limits or exceed the relevant margin to capital ratio, including requiring a CM to post additional margin and requiring a CM to reduce positions leading to a reduction in their initial margin. The documents thus enhance of ICE Clear Europe's overall margin framework and documentation

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(e)(3)(i).

[8] 17 CFR 240.17Ad–22(e)(3)(i).

[9] 17 CFR 240.17Ad–22(e)(6)(i).

and facilitate compliance with the requirements of Rule 17Ad–22(e)(6)(i).[10]

Rule 17Ad–22(b)(1)[11] requires a clearing agency to maintain policies and procedures to ''[m]easure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.'' The practices described in the CC Risk Policy and CC Risk Procedures are consistent with this requirement. The CRS described in the CC Risk Procedures would calculate credit scores for each CP on each day to determine their creditworthiness. CPs with the weakest classifications would then be added to the watch list, monitored more closely and potentially subject to mitigating actions such as being required to post additional or different collateral. For each CM and on each business day, ICE Clear Europe would also measure a CMs margin to capital ratio. ICE Clear Europe would also measure CM exposure limits. CMs that exceed ICE Clear Europe's exposure limit or exceed the relevant margin to capital ratio could also be subject to mitigating actions, including requiring a CM to post additional margin and requiring a CM to reduce positions leading to a reduction in their initial margin. By facilitating the Clearing House's ability to measure its credit exposures and limit potential losses, the amendments would therefore be consistent with the requirements of Rule 17Ad–22(b)(1).[12]

Rule 17A–22(e)(16) provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] safeguard [its] own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.''[13] As discussed above, the CC Risk Policy and CC Risk Procedures are intended to document Clearing House practices with respect to the management of credit risk with respect to FSPs with which assets of the Clearing House and CMs may be maintained. The policy and procedures address the monitoring of FSP counterparty credit risk and the steps the Clearing House may take to mitigate such risk where it exceeds exposure limits. As such, the policy and procedure will continue to enable the Clearing House to safeguard such assets and minimize the risk of loss from FSP default, consistent with the requirements of Rule 17Ad–22(e)(16).[14]

Rule 17Ad–22(e)(2)[15] provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] provide for governance arrangements'' that ''are clear and transparent''[16] and ''specify clear and direct lines of responsibility''.[17] Consistent with existing policies, the proposed CC Risk Policy and the CC Risk Procedures would continue to provide for review by the document owner to ensure that each remains up-to-date and is reviewed in accordance with the Clearing House's governance processes. They would also describe the role of the Chief Risk Officer and the Head of Compliance (or their delegates) in managing material breaches of the documents. In ICE Clear Europe's view, the documents are therefore consistent with the aforementioned requirements of Rule 17Ad–22(e)(2).[18]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The CC Risk Policy and the CC Risk Procedures are intended to document existing practices with respect to counterparty credit risk, for both CMs and FSPs, and are not intended to impose new requirements on CMs. The proposed documents clarify ICE Clear Europe risk management procedures and ensure that ICE Clear Europe continues to appropriately monitors and limit risks relating to Clearing Members' creditworthiness, capital to margin ratio and uncovered stress losses. The policy and procedures would apply to all Clearing Members. The proposed documents are not expected to materially change margin requirements or costs for Clearing Members and any such change which may occur would be tailored to the counterparty credit risk presented by a particular CM. ICE Clear Europe does not believe that the new CC Risk Policy and the CC Risk Procedures will otherwise impact competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate or unnecessary in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2021–015 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ICEEU–2021–015. This file number should be included on the subject line if email is used. To help the Commission process and review your

[10] 17 CFR 240.17Ad–22(e)(6)(i).
[11] 17 CFR 240.17Ad–22(b)(1).
[12] 17 CFR 240.17Ad–22(b)(1).
[13] 17 CFR 240.17Ad–22(e)(16).
[14] 17 CFR 240.17Ad–22(e)(16).
[15] 17 CFR 240.17Ad–22(e)(2).
[16] 17 CFR 240.17Ad–22(e)(2)(i).
[17] 17 CFR 240.17Ad–22(e)(2)(v).
[18] 17 CFR 240.17Ad–22(e)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2021–015 and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26068 Filed 11–29–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93658; File No. SR–ISE–2021–25]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Position Limits for Options on Certain Exchange-Traded Funds

November 23, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2021, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to increase position limits for options on certain exchange-traded funds (''ETFs'').

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to increase certain position and exercise limits within Options 9, Section 13 and 15, respectively, similar to the Cboe Options Exchange, Inc. (''Cboe'').[3]

Position 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 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 position limits 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.

The Exchange has observed an ongoing increase in demand, for both trading and hedging purposes, in options on the following exchange-traded funds (''ETFs''): (1) iShares iBoxx $ Investment Grade Corporate Bond ETF (''LQD''); and (2) VanEck Vectors Gold Miners ETF (''GDX''), (collectively ''Underlying ETFs''). Though the demand for these options appears to have increased, position limits for options on the Underlying ETFs have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (''OTC'') markets. 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 on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs, ETF components, as well as the highly liquid markets for each, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase in position limits.

Proposed Position Limits for Options on the Underlying ETFs

Proposed Position Limits for options on ETFs are determined pursuant to Options 9, Section 13 and vary according to the number of outstanding shares and the trading volumes of the underlying equity security (which includes ETFs) over the past six months. Pursuant to Options 9, Section 13, the

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR–Cboe–2021–029) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds).

largest in capitalization and the most frequently traded ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Options on LQD and GDX are currently subject to the standard position limit of 250,000 contracts as set forth in Options 9, Section 13. Supplementary .01 to Options 9, Section 13 sets forth separate, higher position limits for specific equity options (including options on specific ETFs).[4] The Exchange proposes to amend Supplementary .01 to Options 9, Section 13 to increase the position limits and [sic] for options on each of LQD and GDX.[5] The table below represents the current, and proposed, position limits for options on the ETFs subject to this proposal:

Product	Current position limit	Proposed position limit
LQD	250,000	500,000
GDX	250,000	500,000

The Exchange notes that the proposed position limit for options on LQD and GDX are consistent with current position limits for options on the iShares MSCI Brazil Capped ETF (''EWZ''), iShares 20+ Year Treasury Bond Fund ETF (''TLT''), iShares MSCI Japan ETF (''EWJ''), and iShares iBoxx High Yield Corporate Bond Fund (''HYG''). The Exchange represents that the Underlying ETFs qualify for either (1) the initial listing criteria set forth in Options 4, Section 3(h) for ETFs holding non-U.S. component securities, (2) the generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (''CSA'') is not required, as well as (3) the continued listing criteria in Options 4, Section 4(b) (for ETFs).[6] In compliance with its listing rules, the Exchange also represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement (''CSA'') do not, in the aggregate, represent more than more than 50% of the weight of any of the Underlying ETFs.[7]

Composition and Growth Analysis for Underlying ETPs

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used to or potentially create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[8] The Underlying ETFs, as well as the ETF components, are highly liquid and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. To support the proposed position limit increases, the Exchange considered the liquidity of the Underlying ETFs, the value of the Underlying. ETFs, their components and the relevant marketplace, the share and option volume for the Underlying ETFs, and, where applicable, the availability or comparison of economically equivalent products to options on the Underlying ETFs.

Cboe demonstrated the below trading statistics regarding shares of and options on the Underlying ETFs and the values of the Underlying ETFs and their components:

Product	ADV[9] (ETF shares millions)	ADV (options contracts)	Shares outstanding (millions)[10]	Fund market cap (USD millions)[11]	Share value[12] (USD)
LQD	14.1	30,300	308.1	54,113.7	130.13 (NAV)
GDX	39.4	166,000	419.8	16,170.5	33.80 (NAV)

Cboe collected the same trading statistics as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to its Rule 13.07, to draw comparisons in support of the proposed position limit increases for options on the Underlying ETFs (see further discussion below).

Product	ADV (ETF shares millions)	ADV (options contract)	Shares outstanding (millions)	Fund market cap (USD millions)	Share value (USD)	Current position limits
EWZ	29.2	139,400	173.8	6,506.8	33.71 (NAV)	500,000
TLT	11.5	111,800	103.7	17,121.3	136.85 (NAV)	500,000
EWJ	8.2	15,500	185.3	13,860.7	69.72 (NAV)	500,000

[4] Adjusted option series, in which one option contract in the series represents the delivery of other than 100 shares of the underlying security as a result of a corporate action by the issuer of the security underlying such option series, do not impact the notional value of the underlying security represented by those options. When an underlying security undergoes a corporate action resulting in adjusted series, the Exchange lists new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally actively traded for a short period of time following adjustment, but orders to open options positions in the underlying security are almost exclusively placed in the new standard option series contracts.

[5] Similar amendments are being proposed for the exercise limits for LQD and GDX options within Options 9, Section 15. Exercise limits have been established for the corresponding options at the same levels as the corresponding security's position limits.

[6] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Options 4, Section 3(h); Options 4, Section 4(b).

[7] *See* Options 4, Section 3(h).

[8] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[9] Average daily volume (ADV) data for ETF shares and option contracts, as well as for ETF shares and options on the comparative ETFs presented below, are for all of 2020. Additionally, reference to ADV in ETF shares and ETF options, and indexes herein this proposal are for all of calendar year 2020, unless otherwise indicated.

[10] Shares Outstanding and Net Asset Values (''NAV''), as well as for the comparative ETFs presented below, are as of April 5, 2021 for all ETFs.

[11] Fund Market Capitalization data, as well as for the comparative ETFs presented below, are as of January 14, 2021.

[12] *See* note 10 above.

Product	ADV (ETF shares millions)	ADV (options contract)	Shares outstanding (millions)	Fund market cap (USD millions)	Share value (USD)	Current position limits
HYG	30.5	261,600	254.5	24,067.5	86.86 (NAV)	500,000

The Exchange believes that, overall, the liquidity in the shares of the Underlying ETFs and in their overlying options, the larger market capitalizations for each of the Underlying ETFs, and the overall market landscape relevant to each of the Underlying ETFs support the proposal to increase the position limits for each option class. Given the robust liquidity in and value of the Underlying ETFs and their components, the Exchange does not anticipate that the proposed increase in position limits would create significant price movements as the relevant markets are large enough to adequately absorb potential price movements that may be caused by larger trades.

LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade (''IBOXIG'') Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market which can be used as a basis for tradable products., such as ETFs, and is comprised of over 8,000 bonds.[13] Cboe noted that from 2019 through 2020, ADV has grown significantly in shares of LQD and in options on LQD, from approximately 9.7 million shares in 2019 to 14.1 million through 2020, and from approximately 8,200 option contracts in 2019 to 30,300 through 2020. LQD also continued to experience significant growth in ADV in the first quarter of 2021 with an ADV of approximately 140,200 option contracts. Further, LQD generally experiences higher ADV in shares than both TLT (11.5 million shares) and EWJ (8.2 million shares) and almost double the ADV in option contracts than EWJ (15,500 option contracts). Options on each EWZ, TLT and EWJ are currently subject to a position limit of 500,000 contracts—the proposed limit for options on LQD. The NAV of LQD is also higher than, or comparable to, that of the NAV of the ETFs underlying the options that are currently subject to a position limit of 500,000 option contracts (as presented in the table above), which is indicative that the total value of its underlying components is generally higher or comparable. Per the tables above, LQD's total market capitalization of approximately $54.1 billion is also higher than or comparable to the total market capitalization of the ETFs underlying the options currently subject to a position limit of 5000,000 [sic] contracts. In addition to this, Cboe noted that, although there are currently no options listed for trading on the IBOXIG Index, the components [14] of the IBOXIG Index, which can be used in creating a basket of securities that equate to the LQD ETF, are made up of over 8,000 bonds for which the outstanding face value of each must be greater than or equal to $2 billion.[15] The Exchange believes that the total value of the bonds in the IBOXIG Index, coupled with LQD's share and option volume, total market capitalization, and NAV price indicates that the market is large enough to absorb potential price movements caused by a large trade in LQD. Also, as evidenced above, trading volume in LQD shares has increased over the past few years and the Exchange understands that market participants' need for options have continued to grow alongside the ETF. Particularly, the Exchange notes that in the last year, market participants have sought more cost-effective hedging strategies through the use of LQD options as a result of the borrow on other fixed income ETFs, such as HYG. Therefore, the Exchange believes that because LQD options are being increasingly utilized as an alternative to similar products, such as HYG options, then it is appropriate that options on LQD be subject to the same 500,000 contract position limit that currently exists for options on HYG.

GDX seeks to replicate as closely as possible the price and yield performance of the NYSE Arca Gold Miners (''GDMNTR'') Index, which is intended to track the overall performance of companies involved in the gold mining industry.[16] Cboe noted ADV in GDX options increased from 2019 through 2020, with an ADV of approximately 117,400 option contracts in 2019 to an ADV of approximately 166,000 option contracts in 2020. Cboe noted that ADV in GDX shares did not increase from 2019 to 2020. GDX options also experienced an ADV of approximately 287,800 option contracts in the first quarter of 2021. Cboe noted that the ADV in GDX shares (39.4 million) and options on GDX (166,000 option contracts) are greater than the ADV in EWZ (29.2 million shares and 139,300 option contracts), TLT (11.5 million shares and 111,800 option contracts), EWJ (8.2 million shares and 15,500 option contracts) and HYG (30.5 million shares and 261,600 option contracts), each of which is currently subject to a position limit of 500,000 option contracts—the proposed limit for options on GDX. GDX also experiences a comparable, or higher, market capitalization (approximately $16.2 billion) than EWZ, TLT and EWZ. Cboe noted that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, which tracks the investment results of an index composed of Brazilian equities, and that Cboe had not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in connection with the current 500,000 position limit in place for EWZ options. Additionally, like that of LDQ above, there is currently no index option analogue for the GDX ETF on the GDMNTR Index approved for options trading, however, the components of the GDMNTR Index, which can be used to create the GDX ETF, currently must each have a market capitalization greater than $750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least $1 million in order to be eligible for inclusion in the GDMNTR Index. The Exchange believes that the GDMNTR Index component inclusion requirements, as well as GDX's share and option volume and total market capitalization, indicate that the GDX market is sufficiently large and liquid enough to absorb price movements as a result of potentially oversized trades.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for the ETFs subject to this proposal will lessen the potential for manipulative activity with options on the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant (''AP'') (generally a market maker or other large financial institution) to acquire the underlying

[13] See Markit iBoxx USD Liquid Investment Grade Index, available at *https://cdn.ihsmarkit.com/www/pdf/MKT-iBoxx-USD-Liquid-Investment-GradeIndex-factsheet.pdf* (January 14, 2021).

[14] Investment grade corporate bonds.

[15] *See* note 13 above.

[16] *See* VanEck Vectors Gold Miners ETF, available at *https://www.vaneck.com/library/vaneck-vectors-etfs/gdx-fact-sheet-pdf/* (January 14, 2021).

components the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the AP can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the AP a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the NAV, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption processes for the Underlying ETFs creates a direct link to the underlying components of the ETF and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the options on the Underlying ETFs.

The Exchange understands that the ETF creation and redemption processes seek to keep an ETF's share price trading in line with the product's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, an ETF's share price might rise above the value of its underlying components. When this happens, the AP or issuer believes the ETF may now be overpriced, so it may buy shares of the component securities or assets and then sell ETF shares in the open market. This may drive the ETF's share price back toward the underlying net asset value. Likewise, if an ETF share price starts trading at a discount to the component securities or assets it holds, the AP or issuer can buy shares of the ETF and redeem them for the underlying components. Buying undervalued ETF shares may drive the share price of an ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits (and exercise limits) for the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each Member that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers [17] would continue to be exempt from this reporting requirement, however, the Exchange may access Market Maker position information.[18] Moreover, the Exchange's requirement that Members file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.[19]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.[20] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[21] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Member must maintain for a large position held by itself or by its customer.[22] In addition, Rule 15c3–1 [23] imposes a capital charge on Members to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) [24] of the Act,[25] in general, and furthers the objectives of Section 6(b)(5) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [26] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more

[17] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(36).

[18] The Options Clearing Corporation (''OCC'') through the Large Option Position Reporting (''LOPR'') system acts as a centralized service provider for compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'') with the Exchange.

[19] *See* Options 9, Section 16, Reports Related to Position Limits.

[20] The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal and will continue to employ them.

[21] 17 CFR 240.13d–1.

[22] *See* Options 6C, Section 3, Margin Requirements.

[23] 17 CFR 240.15c3–1.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(5).

effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.,* there are other exchange-traded products (''ETPs'') that use options on the ETFs subject to this proposal as part of their investment strategy, and the applicable position limits as they stand today may inhibit these other ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from OTC markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds and underlying components, and the liquidity of the markets for the applicable options and underlying components will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of the underlying components do not lead to manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization and trading volume and liquidity in shares of and options on the Underlying ETFs (as described above), and, as a result, the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[28]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options is not novel and the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on similar, highly liquid and actively traded ETPs.[29] Furthermore, the Exchange again notes that that the proposed position limits for options on LQD and GDX are consistent with existing position limits for options on comparable ETFs in Options 9, Section 13.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.[30] The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange notes that other options exchanges may choose to file similar proposals with the Commission to increase position limits on options on the Underlying ETFs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[31] and Rule 19b–4(f)(6) thereunder.[32]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[33] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon

[28] *See* Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE–2005–41), at 62149.

[29] *See* Securities Exchange Act Release Nos. 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR–CBOE–2018–042); and 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

[30] Additionally, several other options exchanges have the same position limits as the Exchange, as they incorporate by reference to the Exchange's position limits, and as a result the position limits for options on the Underlying ETFs will increase at those exchanges. For example, The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') position limits are determined by the position limits established by Cboe. *See* NOM and BX Options 9, Section 13, Position Limits.

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to immediately increase the position limits for the products subject to this proposal, which the Exchange believes will provide consistency for ISE Members that are also members at Cboe where these increased position limits are currently in place. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2021–25 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2021–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2021–25, and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25990 Filed 11–29–21; 8:45 am]

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[35] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93649; File No. SR–BOX–2021–06]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as BSTX LLC

November 23, 2021.

On May 12, 2021, 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 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing the listing and trading of equity securities on the Exchange through a facility of the Exchange to be known as BSTX LLC. The proposed rule change was published for comment in the **Federal Register** on June 2, 2021.[3] On July 13, 2021, pursuant to Section 19(b)(2) of the 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 August 18, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On August 27, 2021, the Commission published the proposed rule change, as modified by Amendment No. 1, for notice and comment and instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on June 2, 2021.[9] November 29, 2021 is 180

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92017 (May 25, 2021), 86 FR 29634 (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-box-2021-06/srbox202106.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92387, 86 FR 38140 (July 19, 2021). The Commission designated August 31, 2021 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] Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-box-2021-06/srbox202106-9159349-247726.pdf.*

[7] *See* Securities Exchange Act Release No. 92796, 86 FR 49416 (September 2, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Notice, *supra* note 3.

days from that date, and January 28, 2022 is 240 days from that date. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in the comment letters that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates January 28, 2022 as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–BOX–2021–06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25987 Filed 11–29–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93659; File No. SR–BOX–2021–27]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Position Limits for Options on Certain Exchange-Traded Funds

November 23, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2021, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend IM–3120–2 to permit [sic] increase position limits for options on certain exchange-traded funds (''ETFs''). 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 *http://boxoptions.com.*

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 amend IM–3120–2 to increase position limits for options on certain exchange-traded funds (''ETFs''). This is a competitive filing that is based on a proposal recently submitted by Cboe Exchange, Inc. (''Cboe'') and approved by the Commission.[3]

Position 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 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 position limits 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.

In its filing, Cboe states that it has observed an ongoing increase in demand, for both trading and hedging purposes, in options on the following exchange-traded products (''ETPs''): (1) iShares iBoxx $ Investment Grade Corporate Bond ETF (''LQD'') and (2) VanEck Vectors Gold Miners ETF (''GDX''). Though the demand for these options appears to have increased, position limits for options on LQD and GDX have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (''OTC'') markets. 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 on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits for options on LQD and GDX may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of LQD and GDX, ETF components, as well as the highly liquid markets for each, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on LQD and GDX for legitimate economic purposes compels an increase in position limits.

Proposed Position Limits for Options on LQD and GDX

Position limits for options on ETFs are determined pursuant to Rule 3120 and vary according to the number of outstanding shares and the trading volumes of the underlying equity security (which includes ETFs) over the past six months. Pursuant to Rule 3120, the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. Options on LQD and GDX are currently subject to the standard position limit of 250,000 contracts as set forth in Rule 3120. IM–3120–2 sets forth separate, higher position limits for specific equity options (including options on specific ETFs).[4] The

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93525 (November 4, 2021) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of SR–CBOE–2021–029).

[4] Adjusted option series, in which one option contract in the series represents the delivery of other than 100 shares of the underlying security as

Exchange proposes to amend IM–3120–2 to increase the position limits and, as a result, exercise limits, for options on LQD and GDX.[5] The table below represents the current, and proposed, position limits for options on the ETFs subject to this proposal:

Product	Current position limit	Proposal position limit
LQD	250,000	500,000
GDX	250,000	500,000

The Exchange notes that the proposed position limit for options on LQD and GDX are consistent with current position limits for options on the iShares MSCI Brazil Capped ETF (''EWZ''), iShares 20+ Year Treasury Bond Fund ETF (''TLT''), iShares MSCI Japan ETF (''EWJ''), iShares iBoxx High Yield Corporate Bond Fund (''HYG'') and Financial Select Sector SPDR Fund [sic] (''XLF''). The Exchange represents that LQD and GDX qualify for either (1) the initial listing criteria set forth in Rule 5020(h)(2) for ETFs holding non-U.S. component securities, or (2) the generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (''CSA'') is not required, as well as (3) the continued listing criteria in Rule 5030 (for ETFs).[6] In compliance with its listing rules, the Exchange also represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement (''CSA'') do not, in the aggregate, represent more than more than 50% of the weight of LQD and GDX.[7]

Composition and Growth Analysis for LQD and GDX

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used to or potentially create incentives to manipulate the underlying market so as to benefit options positions. The Securities and Exchange Commission (the ''Commission'') has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[8] LQD and GDX, as well as the ETF components, are highly liquid and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. To support the proposed position limit increases, Cboe considered the liquidity of LQD and GDX, the value of LQD and GDX, their components and the relevant marketplace, the share and option volume for LQD and GDX, and, where applicable, the availability or comparison of economically equivalent products to options on LQD and GDX.

Cboe collected the following trading statistics regarding shares of and options on LQD and GDX and the values of LQD and GDX and their components:

Product	ADV[9] (ETF shares) (millions)	ADV (option contracts)	Shares outstanding (USD) (millions)[10]	Fund market cap (USD) (millions)[11]	Share value (USD)
LQD	14.1	30,300	308.1	54,113.7	130.13 (NAV)
GDX	39.4	166,000	419.8	16,170.5	33.80 (NAV)

Cboe also collected the same trading statistics, where applicable, as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs, to draw comparisons in support of proposed position limit increases for options on LQD and GDX (see further discussion below):

Product	ADV (ETF shares) (millions)	ADV (option contracts)	Shares outstanding (millions)	Fund market cap (USD) (millions)	Share value (USD)	Current position limits
EWZ	29.2	139,400	173.8	6,506.8	33.71 (NAV)	500,000
TLT	11.5	111,800	103.7	17,121.3	136.85 (NAV)	500,000
EWJ	8.2	15,500	185.3	13,860.7	69.72 (NAV)	500,000
HYG	30.5	261,600	254.5	24,067.5	86.86 (NAV)	500,000

a result of a corporate action by the issuer of the security underlying such option series, do not impact the notional value of the underlying security represented by those options. When an underlying security undergoes a corporate action resulting in adjusted series, the Exchange lists new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally actively traded for a short period of time following adjustment, but orders to open options positions in the underlying security are almost exclusively placed in the new standard option series contracts.

[5] By virtue of Rule 3120(d), which is not being amended by this filing, the exercise limits for LQD and GDX options would be similarly increased.

[6] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Rule 5020(h)(2).

[7] *See* Rule 5020(h)(2).

[8] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[9] Average daily volume (ADV) data for ETF shares and option contracts, as well as for ETF shares and options on the comparative ETFs presented below, are for all of 2020. Additionally, reference to ADV in ETF shares and ETF options, and indexes herein this proposal are for all of calendar year 2020, unless otherwise indicated.

[10] Shares Outstanding and Net Asset Values (''NAV''), as well as for the comparative ETFs presented below, are as of April 5, 2021 for all ETFs.

[11] Fund Market Capitalization data, as well as for the comparative ETFs presented below, are as of January 14, 2021.

The Exchange believes that, overall, the liquidity in the shares of LQD and GDX and in their overlying options, the larger market capitalizations for each [sic] LQD and GDX, and the overall market landscape relevant to each [sic] LQD and GDX support the proposal to increase the position limits for each option class. Given the robust liquidity in and value of LQD and GDX and their components, the Exchange does not anticipate that the proposed increase in position limits would create significant price movements as the relevant markets are large enough to adequately absorb potential price movements that may be caused by larger trades.

LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade (''IBOXIG'') Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market which can be used as a basis for tradable products., such as ETFs, and is comprised of over 8,000 bonds.[12] The Exchange notes that from 2019 through 2020, ADV has grown significantly in shares of LQD and in options on LQD, from approximately 9.7 million shares in 2019 to 14.1 million through 2020, and from approximately 8,200 option contracts in 2019 to 30,300 through 2020. LQD also continued to experience significant growth in ADV in the first quarter of 2021 with an ADV of approximately 140,200 option contracts. Further, LQD generally experiences higher ADV in shares than both TLT (11.5 million shares) and EWJ (8.2 million shares) and almost double the ADV in option contracts than EWJ (15,500 option contracts). Options on each EWZ, TLT and EWJ are currently subject to a position limit of 500,000 contracts—the proposed limit for options on LQD. The NAV of LQD is also higher than, or comparable to, that of the NAV of the ETFs underlying the options that are currently subject to a position limit of 500,000 option contracts (as presented in the table above), which is indicative that the total value of its underlying components is generally higher or comparable. Per the tables above, LQD's total market capitalization of approximately $54.1 billion is also higher than or comparable to the total market capitalization of the ETFs underlying the options currently subject to a position limit of 5000,000 [sic] contracts. In addition to this, the Exchange notes that, although there are currently no options listed for trading on the IBOXIG Index, the components [13] of the IBOXIG Index, which can be used in creating a basket of securities that equate to the LQD ETF, are made up of over 8,000 bonds for which the outstanding face value of each must be greater than or equal to $2 billion.[14] The Exchange believes that the total value of the bonds in the IBOXIG Index, coupled with LQD's share and option volume, total market capitalization, and NAV price indicates that the market is large enough to absorb potential price movements caused by a large trade in LQD. Also, as evidenced above, trading volume in LQD shares has increased over the past few years and the Exchange understands that market participants' need for options have continued to grow alongside the ETF. Particularly, the Exchange notes that in the last year, market participants have sought more cost-effective hedging strategies through the use of LQD options as a result of the borrow on other fixed income ETFs, such as HYG. Therefore, the Exchange believes that because LQD options are being increasingly utilized as an alternative to similar products, such as HYG options, then it is appropriate that options on LQD be subject to the same 500,000 contract position limit that currently exists for options on HYG.

GDX seeks to replicate as closely as possible the price and yield performance of the NYSE Arca Gold Miners (''GDMNTR'') Index, which is intended to track the overall performance of companies involved in the gold mining industry.[15] ADV in GDX options has increased from 2019 through 2020, with an ADV of approximately 117,400 option contracts in 2019 to an ADV of approximately 166,000 option contracts in 2020. The Exchange notes that ADV in GDX shares did not increase from 2019 to 2020. GDX options also experienced an ADV of approximately 287,800 option contracts in the first quarter of 2021. The Exchange notes that the ADV in GDX shares (39.4 million) and options on GDX (166,000 option contracts) are greater than the ADV in EWZ (29.2 million shares and 139,300 option contracts), TLT (11.5 million shares and 111,800 option contracts), EWJ (8.2 million shares and 15,500 option contracts) and HYG (30.5 million shares and 261,600 option contracts), each of which is currently subject to a position limit of 500,000 option contracts—the proposed limit for options on GDX. GDX also experiences a comparable, or higher, market capitalization (approximately $16.2 billion) than EWZ, TLT and EWZ. The Exchange particularly notes that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, which tracks the investment results of an index composed of Brazilian equities, and that the Exchange has not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in connection with the current 500,000 position limit in place for EWZ options. Additionally, like that of LDQ above, there is currently no index option analogue for the GDX ETF on the GDMNTR Index approved for options trading, however, the components of the GDMNTR Index, which can be used to create the GDX ETF, currently must each have a market capitalization greater than $750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least $1 million in order to be eligible for inclusion in the GDMNTR Index. The Exchange believes that the GDMNTR Index component inclusion requirements, as well as GDX's share and option volume and total market capitalization, indicate that the GDX market is sufficiently large and liquid enough to absorb price movements as a result of potentially oversized trades.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for the ETFs subject to this proposal will lessen the potential for manipulative activity with options on LQD and GDX. When an ETF provider wants to create more shares, it looks to an Authorized Participant (''AP'') (generally a Market Maker or other large financial institution) to acquire the underlying components the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the AP can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the AP a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the NAV, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption processes for LQD and GDX creates a direct link to the underlying

[12] *See* Markit iBoxx USD Liquid Investment Grade Index, available at *https://cdn.ihsmarkit.com/www/pdf/MKT-iBoxx-USD-Liquid-Investment-Grade-Index-factsheet.pdf* (January 14, 2021).

[13] Investment grade corporate bonds.

[14] *See supra* note 13.

[15] *See* VanEck Vectors Gold Miners ETF, available at *https://www.vaneck.com/library/vaneck-vectors-etfs/gdx-fact-sheet-pdf* (January 14, 2021).

components of the ETF and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the options on LQD and GDX.

The Exchange understands that the ETF creation and redemption processes seek to keep an ETF's share price trading in line with the product's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, an ETF's share price might rise above the value of its underlying components. When this happens, the AP or issuer believes the ETF may now be overpriced, so it may buy shares of the component securities or assets and then sell ETF shares in the open market. This may drive the ETF's share price back toward the underlying net asset value. Likewise, if an ETF share price starts trading at a discount to the component securities or assets it holds, the AP or issuer can buy shares of the ETF and redeem them for the underlying components. Buying undervalued ETF shares may drive the share price of an ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits for the options on LQD and GDX would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on LQD and GDX would remain unchanged. Thus, the Exchange would still require that each Participant that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market-Makers would continue to be exempt from this reporting requirement, however, the Exchange may access Market-Maker position information.[16] Moreover, the Exchange's requirement that Participants file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.[17]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of LQD and GDX and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.[18] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[19] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on LQD and GDX. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Participant must maintain for a large position held by itself or by its customer.[20] In addition, Rule 15c3–1 [21] imposes a capital charge on Participants to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[22] in general, and Section 6(b)(5) of the Act,[23] in particular, in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [24] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on LQD and GDX will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.,* there are other exchange-traded products (''ETPs'') that use options on the ETFs subject to this proposal as part of their investment strategy, and the applicable position limits as they stand today may inhibit these other ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from OTC markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of LQD and GDX, the considerable market capitalization of the funds and underlying components,

[16] The Options Clearing Corporation (''OCC'') through the Large option Position Reporting (''LOPR'') system acts as a centralized service provider for Participant compliance with position reporting requirements by collecting data from each Participant, consolidating the information, and ultimately providing detailed listings of each Participant's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'').

[17] *See* Rule 3150 for reporting requirements.

[18] The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal and will continue to employ them.

[19] 17 CFR 240.13d–1.

[20] *See* Rule 10100 for a description of margin requirements.

[21] 17 CFR 240.15c3–1.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *Id.*

and the liquidity of the markets for the applicable options and underlying components will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of the underlying components do not lead to manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization and trading volume and liquidity in shares of and options on LQD and GDX (as described above), and, as a result, the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[25]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options is not novel and the Commission has approved similar proposed rule changes to increase position limits for options on similar, highly liquid and actively traded ETPs.[26] Furthermore, the Exchange again notes that that the proposed position limits for options on LQD and GDX are consistent with existing position limits for options on other ETFs in IM–3120–2.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on LQD and GDX, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Cboe that was approved by the Commission.[27] The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders. The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange notes that other options exchanges may choose to file similar proposals with the Commission to increase position limits on options on LQD and GDX.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[30] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[31] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to immediately increase the position limits for the products subject to this proposal, which the Exchange believes will provide consistency for BOX Participants that are also members at Cboe where these increased position limits are currently in place. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

[25] *See* Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE– 2005–41), at 62149.

[26] *See* Securities Exchange Act Release Nos. 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR–CBOE–2018–042); and 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

[27] *See supra,* note 3.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2021–27 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–2021–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2021–27, and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25991 Filed 11–29–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93661; File No. SR–Phlx–2021–70]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Position Limits for Options on Certain Exchange-Traded Funds

November 23, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to increase position limits for options on certain exchange-traded funds (''ETFs'').

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to increase certain position and exercise limits within Options 9, Section 13 and 15, respectively, similar to the Cboe Options Exchange, Inc. (''Cboe'').[3]

Position 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 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 position limits 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.

The Exchange has observed an ongoing increase in demand, for both trading and hedging purposes, in options on the following exchange-traded funds (''ETFs''): (1) iShares iBoxx $ Investment Grade Corporate Bond ETF (''LQD''); and (2) VanEck Vectors Gold Miners ETF (''GDX''), (collectively ''Underlying ETFs''). Though the demand for these options appears to have increased, position limits for options on the Underlying ETFs have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR–Cboe–2021–029) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds).

contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs, ETF components, as well as the highly liquid markets for each, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase in position limits.

Proposed Position Limits for Options on the Underlying ETFs

Proposed Position Limits for options on ETFs are determined pursuant to Options 9, Section 13 and vary according to the number of outstanding shares and the trading volumes of the underlying equity security (which includes ETFs) over the past six months. Pursuant to Options 9, Section 13, the largest in capitalization and the most frequently traded ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Options on LQD and GDX are currently subject to the standard position limit of 250,000 contracts as set forth in Options 9, Section 13. Options 9, Section 13(a) sets forth separate, higher position limits for specific equity options (including options on specific EFFs [sic]).[4] The Exchange proposes to amend Options 9, Section 13(a) to increase the position limits and, as a result, exercise limits, for options on each of LQD and GDX.[5] The table below represents the current, and proposed, position limits for options on the ETFs subject to this proposal:

Product	Current position limit	Proposed position limit
LQD	250,000	500,000
GDX	250,000	500,000

The Exchange notes that the proposed position limit for options on LDQ [sic] and GDX are consistent with current position limits for options on the iShares MSCI Brazil Capped ETF (''EWZ''), iShares 20+ Year Treasury Bond Fund ETF (''TLT''), iShares MSCI Japan ETF (''EWJ''), and iShares iBoxx High Yield Corporate Bond Fund (''HYG''). The Exchange represents that the Underlying ETFs qualify for either (1) the initial listing criteria set forth in Options 4, Section 3(h) for ETFs holding non-U.S. component securities, (2) the generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (''CSA'') is not required, as well as (3) the continued listing criteria in Options 4, Section 4(b) (for ETFs).[6] In compliance with its listing rules, the Exchange also represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement (''CSA'') do not, in the aggregate, represent more than more than 50% of the weight of any of the Underlying ETFs.[7]

Composition and Growth Analysis for Underlying ETPs

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used to or potentially create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[8] The Underlying ETFs, as well as the ETF components, are highly liquid and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. To support the proposed position limit increases, the Exchange considered the liquidity of the Underlying ETFs, the value of the Underlying ETFs, their components and the relevant marketplace, the share and option volume for the Underlying ETFs, and, where applicable, the availability or comparison of economically equivalent products to options on the Underlying ETFs.

Cboe demonstrated the below trading statistics regarding shares of and options on the Underlying ETFs and the values of the Underlying ETFs and their components:

Product	ADV[9] (ETF shares millions)	ADV (options contracts)	Shares outstanding (millions)[10]	Fund market cap (USD millions)[11]	Share value[12] (USD)
LQD	14.1	30,300	308.1	54,113.7	130.13 (NAV).
GDX	39.4	166,000	419.8	16,170.5	33.80 (NAV).

[4] Adjusted option series, in which one option contract in the series represents the delivery of other than 100 shares of the underlying security as a result of a corporate action by the issuer of the security underlying such option series, do not impact the notional value of the underlying security represented by those options. When an underlying security undergoes a corporate action resulting in adjusted series, the Exchange lists new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally actively traded for a short period of time following adjustment, but orders to open options positions in the underlying security are almost exclusively placed in the new standard option series contracts.

[5] By amending the position limits for LQD and GDX options within Options 9, Section 13, the exercise limits are also being amended pursuant to Options 3, Section 15(a). Exercise limits have been established for the corresponding options at the same levels as the corresponding security's position limits.

[6] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Options 4, Section 3(h); Options 4, Section 4(b).

[7] *See* Options 4, Section 3(h).

[8] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[9] Average daily volume (ADV) data for ETF shares and option contracts, as well as for ETF shares and options on the comparative ETFs presented below, are for all of 2020. Additionally, reference to ADV in ETF shares and ETF options, and indexes herein this proposal are for all of calendar year 2020, unless otherwise indicated.

[10] Shares Outstanding and Net Asset Values (''NAV''), as well as for the comparative ETFs presented below, are as of April 5, 2021 for all ETFs.

[11] Fund Market Capitalization data, as well as for the comparative ETFs presented below, are as of January 14, 2021.

[12] *See* note 10 above.

Cboe collected the same trading statistics as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to its Rule 13.07, to draw comparisons in support of the proposed position limit increases for options on the Underlying ETFs (see further discussion below).

Product	ADV (ETF shares millions)	ADV (options contract)	Shares outstanding (millions)	Fund market cap (USD millions)	Share value (USD)	Current position limits
EWZ	29.2	139,400	173.8	6,506.8	33.71 (NAV)	500,000
TLT	11.5	111,800	103.7	17,121.3	136.85 (NAV)	500,000
EWJ	8.2	15,500	185.3	13,860.7	69.72 (NAV)	500,000
HYG	30.5	261,600	254.5	24,067.5	86.86 (NAV)	500,000

The Exchange believes that, overall, the liquidity in the shares of the Underlying ETFs and in their overlying options, the larger market capitalizations for each of the Underlying ETFs, and the overall market landscape relevant to each of the Underlying ETFs support the proposal to increase the position limits for each option class. Given the robust liquidity in and value of the Underlying ETFs and their components, the Exchange does not anticipate that the proposed increase in position limits would create significant price movements as the relevant markets are large enough to adequately absorb potential price movements that may be caused by larger trades.

LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade (''IBOXIG'') Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market which can be used as a basis for tradable products, such as ETFs, and is comprised of over 8,000 bonds.[13] Cboe noted that from 2019 through 2020, ADV has grown significantly in shares of LQD and in options on LQD, from approximately 9.7 million shares in 2019 to 14.1 million through 2020, and from approximately 8,200 option contracts in 2019 to 30,300 through 2020. LQD also continued to experience significant growth in ADV in the first quarter of 2021 with an ADV of approximately 140,200 option contracts. Further, LQD generally experiences higher ADV in shares than both TLT (11.5 million shares) and EWJ (8.2 million shares) and almost double the ADV in option contracts than EWJ (15,500 option contracts). Options on each EWZ, TLT and EWJ are currently subject to a position limit of 500,000 contracts—the proposed limit for options on LQD. The NAV of LQD is also higher than, or comparable to, that of the NAV of the ETFs underlying the options that are currently subject to a position limit of 500,000 option contracts (as presented in the table above), which is indicative that the total value of its underlying components is generally higher or comparable. Per the tables above, LQD's total market capitalization of approximately $54.1 billion is also higher than or comparable to the total market capitalization of the ETFs underlying the options currently subject to a position limit of 5000,000 [sic] contracts. In addition to this, Cboe noted that, although there are currently no options listed for trading on the IBOXIG Index, the components [14] of the IBOXIG Index, which can be used in creating a basket of securities that equate to the LQD ETF, are made up of over 8,000 bonds for which the outstanding face value of each must be greater than or equal to $2 billion.[15] The Exchange believes that the total value of the bonds in the IBOXIG Index, coupled with LQD's share and option volume, total market capitalization, and NAV price indicates that the market is large enough to absorb potential price movements caused by a large trade in LQD. Also, as evidenced above, trading volume in LQD shares has increased over the past few years and the Exchange understands that market participants' need for options have continued to grow alongside the ETF. Particularly, the Exchange notes that in the last year, market participants have sought more cost-effective hedging strategies through the use of LQD options as a result of the borrow on other fixed income ETFs, such as HYG. Therefore, the Exchange believes that because LQD options are being increasingly utilized as an alternative to similar products, such as HYG options, then it is appropriate that options on LQD be subject to the same 500,000 contract position limit that currently exists for options on HYG.

GDX seeks to replicate as closely as possible the price and yield performance of the NYSE Arca Gold Miners (''GDMNTR'') Index, which is intended to track the overall performance of companies involved in the gold mining industry.[16] Cboe noted ADV in GDX options increased from 2019 through 2020, with an ADV of approximately 117,400 option contracts in 2019 to an ADV of approximately 166,000 option contracts in 2020. Cboe noted that ADV in GDX shares did not increase from 2019 to 2020. GDX options also experienced an ADV of approximately 287,800 option contracts in the first quarter of 2021. Cboe noted that the ADV in GDX shares (39.4 million) and options on GDX (166,000 option contracts) are greater than the ADV in EWZ (29.2 million shares and 139,300 option contracts), TLT (11.5 million shares and 111,800 option contracts), EWJ (8.2 million shares and 15,500 option contracts) and HYG (30.5 million shares and 261,600 option contracts), each of which is currently subject to a position limit of 500,000 option contracts—the proposed limit for options on GDX. GDX also experiences a comparable, or higher, market capitalization (approximately $16.2 billion) than EWZ, TLT and EWZ. Cboe noted that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, which tracks the investment results of an index composed of Brazilian equities, and that Cboe had not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in connection with the current 500,000 position limit in place for EWZ options. Additionally, like that of LDQ above, there is currently no index option analogue for the GDX ETF on the GDMNTR Index approved for options trading, however, the components of the GDMNTR Index, which can be used to create the GDX ETF, currently must each have a market capitalization greater than $750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least $1

[13] See Markit iBoxx USD Liquid Investment Grade Index, available at *https://cdn.ihsmarkit.com/www/pdf/MKT-iBoxx-USD-Liquid-Investment-GradeIndex-factsheet.pdf* (January 14, 2021).

[14] Investment grade corporate bonds.

[15] *See* note 13 above.

[16] *See* VanEck Vectors Gold Miners ETF, available at *https://www.vaneck.com/library/vaneck-vectors-etfs/gdx-fact-sheet-pdf/* (January 14, 2021).

million in order to be eligible for inclusion in the GDMNTR Index. The Exchange believes that the GDMNTR Index component inclusion requirements, as well as GDX's share and option volume and total market capitalization, indicate that the GDX market is sufficiently large and liquid enough to absorb price movements as a result of potentially oversized trades.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for the ETFs subject to this proposal will lessen the potential for manipulative activity with options on the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant (''AP'') (generally a market maker or other large financial institution) to acquire the underlying components the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the AP can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the AP a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the NAV, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption processes for the Underlying ETFs creates a direct link to the underlying components of the ETF and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the options on the Underlying ETFs.

The Exchange understands that the ETF creation and redemption processes seek to keep an ETF's share price trading in line with the product's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, an ETF's share price might rise above the value of its underlying components. When this happens, the AP or issuer believes the ETF may now be overpriced, so it may buy shares of the component securities or assets and then sell ETF shares in the open market. This may drive the ETF's share price back toward the underlying net asset value. Likewise, if an ETF share price starts trading at a discount to the component securities or assets it holds, the AP or issuer can buy shares of the ETF and redeem them for the underlying components. Buying undervalued ETF shares may drive the share price of an ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits (and exercise limits) for the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each member organization that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers [17] would continue to be exempt from this reporting requirement, however, the Exchange may access Market Maker position information.[18] Moreover, the Exchange's requirement that member organizations file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.[19]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.[20] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[21] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member organization must maintain for a large position held by itself or by its customer.[22] In addition, Rule 15c3–1 [23] imposes a capital charge on member organizations

[17] A ''Market Maker'' means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. See Options 1, Section 1(b)(28). A ''Streaming Quote Trader'' or ''SQT'' means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54). A ''Remote Streaming Quote Trader'' or ''RSQT'' means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (''RMM'') pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (''RSQTO'') or Remote Market Maker Organization (''RMO'') are Exchange member organizations that have qualified pursuant to Options 2, Section 1. *See* Options 1, Section 1(b)(49). A ''Lead Market Maker'' means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Options 2, Section 11. *See* Options 1, Section 1(b)(27).

[18] The Options Clearing Corporation (''OCC'') through the Large Option Position Reporting (''LOPR'') system acts as a centralized service provider for compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'') with the Exchange.

[19] *See* Options 9, Section 13(f).

[20] The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal and will continue to employ them.

[21] 17 CFR 240.13d–1.

[22] *See* Options 6C, Section 3, Margin Requirements.

[23] 17 CFR 240.15c3–1.

to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)[24] of the Act,[25] in general, and furthers the objectives of Section 6(b)(5) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.,* there are other exchange-traded products (''ETPs'') that use options on the ETFs subject to this proposal as part of their investment strategy, and the applicable position limits as they stand today may inhibit these other ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from OTC markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds and underlying components, and the liquidity of the markets for the applicable options and underlying components will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of the underlying components do not lead to manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization and trading volume and liquidity in shares of and options on the Underlying ETFs (as described above), and, as a result, the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[28]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options is not novel and the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on similar, highly liquid and actively traded ETPs.[29] Furthermore, the Exchange again notes that that the proposed position limits for options on LQD and GDX are consistent with existing position limits for options on comparable ETFs in Options 9, Section 13.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.[30] The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange notes that other options exchanges may choose to file similar proposals with the Commission to

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE–2005–41), at 62149.

[29] *See* Securities Exchange Act Release Nos. 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR–CBOE–2018–042); and 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

[30] Additionally, several other options exchanges have the same position limits as the Exchange, as they incorporate by reference to the Exchange's position limits, and as a result the position limits for options on the Underlying ETFs will increase at those exchanges. For example, The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') position limits are determined by the position limits established by Cboe. *See* NOM and BX Options 9, Section 13, Position Limits.

increase position limits on options on the Underlying ETFs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [31] and Rule 19b–4(f)(6) thereunder.[32]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [33] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to immediately increase the position limits for the products subject to this proposal, which the Exchange believes will provide consistency for Phlx members and member organizations that are also members at Cboe where these increased position limits are currently in place. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–70 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–Phlx–2021–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2021–70, and should be submitted on or before December 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25994 Filed 11–29–21; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2021–0047]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA.

Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2021–0047].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235,

Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2021–0047].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 31, 2022. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Application for a Social Security Number Card, the Social Security Number Application Process (SSNAP), internet SSN Replacement Card (iSSNRC) Application, and Online Social Security Number Application Process (oSSNAP)—20 CFR 422.103–422.110—0960–0066.* SSA collects information on the SS–5 (used in the United States) and SS–5–FS (used outside the United States) to issue original or replacement Social Security cards. SSA also enters the application data into the SSNAP application when issuing a card via telephone or in person. In addition, hospitals collect the same information on SSA's behalf for newborn children through the Enumeration-at-Birth process. In this process, parents of newborns provide hospital birth registration clerks with information required to register these newborns. Hospitals send this information to State Bureaus of Vital Statistics (BVS), and they send the information to SSA's National Computer Center. SSA then uploads the data to the SSA mainframe along with all other enumeration data, and we assign the newborn a Social Security number (SSN) and issue a Social Security card. Respondents can also use these modalities to request a change in their SSN records. In addition, the iSSNRC internet application collects information similar to the paper SS–5 for no-change replacement SSN cards for adult U.S. citizens. The iSSNRC modality allows certain applicants for SSN replacement cards to complete the internet application and submit the required evidence online rather than completing a paper Form SS–5. Finally, oSSNAP collects information similar to that which we collect on the paper SS–5 for no change situations, with the exception of name change, new or replacement SSN cards for U.S. Citizens (adult and minor children), and replacement cards only for non-U.S. citizens. oSSNAP allows these applicants for new or replacement SSN cards to start the application process on-line, receive a list of evidentiary documents, and then submit the application data to SSA for further processing by SSA employees. Applicants need to visit a local SSA office to complete the application process. The respondents for this information collection are applicants for original and replacement Social Security cards, or individuals who wish to change information in their SSN records, who use any of the modalities described above.

Type of Request: Revision of an OMB-approved information collection.

Application scenario	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
EAB Modality							
Hospital staff who relay the State birth certificate information to the BVS and SSA through the EAB process	3,587,284	1	5	298,857	* $23.74	** 0	*** $7,094,865
iSSNRC Modality							
Adult U.S. Citizens requesting a replacement card with no changes through the iSSNRC	3,141,061	1	5	261,755	* 25.72	** 0	*** 6,732,341
Adult U.S. Citizens requesting a replacement card with a name change through iSSNRC	44,818	1	5	3,735	25.72	** 0	*** 96,060
oSSNAP Modality							
Adult U.S. Citizens providing information to receive a replacement card through the oSSNAP +	866,575	1	5	72,215	* 25.72	** 24	*** 10,772,683
Adult U.S. Citizens providing information to receive an original card through the oSSNAP +	31,521	1	5	2,627	25.72	* 24	*** 391,848
Adult Non-U.S. Citizens providing information to receive an original card through the oSSNAP +	114,429	1	5	9,536	25.72	** 24	*** 1,422,505
Adult Non-U.S. Citizens providing information to receive a replacement card through the oSSNAP +	63,925	1	5	5,327	25.72	** 24	794,673
SSNAP/SS–5 Modality							
Respondents who do not have to provide parents' SSNs	2,791,499	1	9	418,725	* 25.72	** 24	*** 39,488,545
Respondents whom we ask to provide parents' SSNs (when applying for original SSN cards for children under age 12)	102,258	1	9	15,339	* 25.72	** 24	*** 1,446,542
Applicants age 12 or older who need to answer additional questions so SSA can determine whether we previously assigned an SSN	335,587	1	10	55,931	* 25.72	** 24	*** 4,891,069

Application scenario	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Applicants asking for a replacement SSN card beyond the allowable limits (*i.e.,* who must provide additional documentation to accompany the application)	2,428	1	60	2,428	*25.72	**24	***87,427
Enumeration Quality Review							
Authorization to SSA to obtain personal information cover letter	500	1	15	125	*25.72	**24	***8,359
Authorization to SSA to obtain personal information follow-up cover letter	500	1	15	125	*25.72	**24	***8,359
Grand Total							
Totals	11,081,385			1,146,724			***73,235,275

+ The number of respondents for this modality is an estimate based on google analytics data for the SS–5 form downloads from *SSA.Gov.*

* We based this figure on average Hospital Records Clerks (*https://www.bls.gov/oes/current/oes292098.htm*), and average U.S. worker's hourly wages (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*) as reported by the U.S. Bureau of Labor Statistics.

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Response to Notice of Revised Determination—20 CFR 404.913, 404.914, 404.992(b), 416.1413–416.1414, and 416.1492(d)—0960–0347. When SSA determines: (1) Claimants for initial disability benefits do not actually have a disability; or (2) current disability recipients' records show their disability ceased, SSA notifies the disability claimants, or recipients of this decision. In response to this notice, the affected claimants and disability recipients have the following recourse: (1) They may request a disability hearing to contest SSA's decision; and (2) they may submit additional information or evidence for SSA to consider. Disability claimants, recipients, and their representatives use Form SSA–765 to accomplish these two actions. If respondents request the first option, SSA's Disability Hearings Unit uses the form to schedule a hearing; ensure an interpreter is present, if required; and ensure the disability recipients or claimants, and their representatives, receive a notice about the place and time of the hearing. If respondents choose the second option, SSA uses the form and other evidence to reevaluate the claimant's or recipients' case, and determine if the new information or evidence will change SSA's decision. The respondents are disability claimants, current disability recipients, or their representatives.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–765	51	1	30	26	*$19.01	**24	***$874

* We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Travel Expense Reimbursement—20 CFR 404.999(d) and 416.1499—0960–0434. The Social Security Act (Act) provides for travel expense reimbursement from Federal and State agencies for claimant travel incidental to medical examinations, and to parties, their representatives, and all reasonably necessary witnesses for travel exceeding 75 miles to attend medical examinations, reconsideration interviews and proceedings before an administrative law judge. Reimbursement procedures require the claimant to provide: (1) A list of expenses incurred; and (2) receipts of such expenses. Federal and state personnel review the listings and receipts to verify the reimbursable amount to the requestor. The respondents are claimants for Title II benefits and Title XVI payments, their representatives, and witnesses.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) ***
404.999(d) & 416.1499	60,000	1	10	10,000	* $19.01	** $190,100

* We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Pain Report Child—20 CFR 404.1512 and 416.912—0960–0540. Before SSA can make a disabilitydetermination for a child, we require evidence from Supplemental Security Income (SSI) applicants or claimants to prove their disability. Form SSA–3371–BK provides disability interviewers, and SSI applicants or claimants in self-help situations, with a convenient way to record information about claimants' pain or other symptoms. The State disability determination services adjudicators and judges then use the information from Form SSA–3371–BK to assess the effects of symptoms on function for purposes of determining disability under the Act. The respondents are applicants for, or claimants of SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3371	1,500	1	15	375	* $10.95	** 24	*** $10,676

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Internet Request for Replacement of Forms SSA–1099 & SSA–1042S—20 CFR 401.45—0960–0583. Title II beneficiaries use Forms SSA–1099 and SSA–1042S, Social Security Benefit Statement, to determine if their Social Security benefits are taxable, and the amount they need to report to the Internal Revenue Service. In cases where the original forms are unavailable (*e.g.,* lost, stolen, mutilated), an individual may use SSA's automated telephone application to request a replacement SSA–1099 and SSA–1042. SSA uses the information from the automated telephone requests to verify the identity of the requestor and to provide replacement copies of the forms. SSA accepts information in other ways, too; however, the automated telephone options reduce requests to the National 800 Number Network (N8NN) and visits to local Social Security field offices (FO). The respondents are Title II beneficiaries who wish to request a replacement SSA–1099 or SSA–1042S via telephone.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Automated Telephone Requests	219,117	1	2	7,304	$27.07	** 19	*** $260,332
N8NN	497,778	1	3	24,889	27.07	** 19	*** 887,084
Calls to local field offices	848,444	1	3	42,422	27.07	** 19	*** 1,512,022
Other (program service centers)	41,640	1	3	2,082	27.07	** 19	*** 74,199
Totals	1,606,979			76,697	27.07		*** 2,733,637

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure by averaging the average FY 2021 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. *The Ticket to Work and Self-Sufficiency Program—20 CFR 411—0960–0644.* SSA's Ticket to Work (TTW) Program transitions Social Security Disability Insurance (SSDI) and SSI recipients toward independence by allowing them to receive Social Security payments while maintaining employment under the auspices of the program. SSA uses service providers, called Employment Networks (ENs), to supervise participant progress through the stages of TTW Program participation, such as job searches and interviews; progress reviews; and changes in ticket status. ENs can be private for-profit and nonprofit organizations, as well as state vocational rehabilitation agencies (VRs). SSA and the ENs utilize the TTW program manager to operate the TTW Program

and exchange information about participants. For example, the ENs use the program manager to provide updates on tasks such as selecting a payment system, or requesting payments for helping the beneficiary achieve certain work goals. Since the ENs are not PRA-exempt, the multiple information collections within the TTW program manager require OMB approval. Most of the categories of information are necessary for SSA to: (1) Comply with the Ticket to Work legislation; and (2) provide proper oversight of the program. SSA collects this information through several modalities, including forms, electronic exchanges, and written documentation. The respondents are the ENs or state VRs, SSDI beneficiaries, and blind or disabled SSI recipients working under the auspices of the TTW Program. Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
a) 20 CFR 411.140(d)(2)/Interactive Voice Recognition Telephone	6,000	1	3	300	* $15.43	** $4,629
a) 20 CFR 411.140(d)(2)/Ticket Assignment via Portal	91,484	1	2	3,049	** 15.43	** 47,046
a) 20 CFR 411.140(d)(3), 411.150(b)(3) and 411.325(a)/State Agency Ticket Assignment Form/SSA–1365	948	1	15	237	* 15.43	** 3,657
a) 20 CFR 411.140(d)(3); 411.325(a); 411.150(b)(3); 20 CFR 411.465./Individualized Work Plan/SSA–1370	26,007	1	60	26,007	* 15.43	** 401,288
a) 20 CFR 411.166; 411.170(b)/Electronic File Submission	4,104	1	5	342	* 15.43	** 5,277
b) 20 CFR 411.145; 411.325/Requesting Ticket Unassignments	2,494	1	15	624	* 15.43	** 9,628
b) 20 CFR 411.535(a)(1)(iii)/Notification of VR Case Closures via Portal	136,478	1	11	25,021	* 15.43	** 386,074
c) 20 CFR 411.200(b)/Requests for Certification of Work and Educational Progress/SSA–1375	179	1	30	90	* 15.43	** 1,389
d) 20 CFR 411.505/Selecting a Payment System	33	1	10	6	* 15.43	** 93
e) 20 CFR 411.400—411.420; 20 CFR 411.325(d) and 411.415/Reporting Referral Agreement Activity	31	1	15	8	* 15.43	** 123
f) 20 CFR 411.575/Requesting EN Payments/SSA–1391 or SSA–1398	1,704	1	40	1,136	* 15.43	** 17,528
f) 20 CFR 411.560 and 411.581/Requesting Split Payment/SSA–1401	5	1	20	2	* 15.43	** 31
g) 20 CFR 411.325(f)/Proof of Relationship	6,870	1	20	2,290	* 15.43	** 35,335
g) 20 CFR 411.325(f)/Certification of Services	2,438	1	20	813	* 15.43	** 12,545
g) 20 CFR 411.325(f)/Annual Performance Outcome Report	507	1	15	127	* 15.43	** 1,960
h) 20 CFR 411.435, 411.615, and 411.625/Dispute Resolution	196	1	120	392	* 15.43	** 6,049
i) 20 CFR 411.320/EN Contract Changes/SSA–1374	929	1	5	77	* 15.43	** 1,188
j) 20 CFR 411.200(b)/WISE Webinar Registration Page	4,000	1	3	200	* 15.43	** 3,086
j) 20 CFR 411.200(b)/WISE Webinar Survey	1,776	1	3	89	* 15.43	** 1,373
Totals	286,183		60,810			** 938,299

* We based these figures by averaging the average hourly wages for Social and Human Service Assistants (*https://www.bls.gov/oes/current/oes211093.htm*); Rehabilitation Counselors (*https://www.bls.gov/oes/current/oes211015.htm*); and the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. *Representative Payment Policies and Administrative Procedures for Imposing Penalties for False or Misleading Statements or Withholding of Information—0960–0740.* This information collection request comprises several regulation sections that provide additional safeguards for Social Security beneficiaries' whose representative payees receive their payment. SSA requires representative payees to notify them of any event or change in circumstances that would affect receipt of benefits or performance of payee duties. SSA uses the information to determine continued eligibility for benefits, the amount of benefits due and if the payee is suitable to continue servicing as payee. The respondents are representative payees

who receive and use benefits on behalf of Social Security beneficiaries.

Type of Collection: Revision of an OMB-approved information collection.

Regulation sections	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
404.2035(d)—Paper/Mail	30,489	1	5	2,541	*$27.07		***$68,785
404.2035(d)—Office interview/Intranet	579,291	1	5	48,274	*27.07	**21	***6,795,274
404.2035(f)—Paper/Mail	304	1	5	25	**27.07		***677
404.2035(f)—Office interview/Intranet	5,792	1	5	483	*27.07	**21	***67,946
416.635(d)—Paper/Mail	16,630	1	5	1,386	*27.07		***37,519
416.635(d)—Office interview/Intranet	305,316	1	5	25,443	*27.07	**21	***3,581,469
416.635(f)—Paper/Mail	166	1	5	14	*27.07		***379
416.635(f)—Office interview/Intranet	3,159	1	5	263	*27.07	**21	***37,059
Totals	941,147			78,429			***10,589,108

*We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

**We based this figure by averaging the average FY 2021 wait times for field offices and teleservice centers, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Protecting the Public and Our Personnel To Ensure Operational Effectiveness (RIN 0960–AH35), Regulation 3729I—20 CFR 422.905 and 422.906—0960–0796. SSA published regulations for the process we follow when we restrict individuals from receiving in-person services in our field offices and provide them, instead, with alternative services. We published these rules to create a safer environment for our personnel and members of the public who use our facilities, while ensuring we continue to serve the American people with as little disruption to our operations as possible. Under our regulations at 20 CFR 422.905, an individual for whom we restrict access to our facilities has the opportunity to appeal our decision within 60 days of the date of the restrictive access and alternative service notice. To appeal, restricted individuals must submit a written request stating why they believe SSA should rescind the restriction and allow them to conduct business with us on a face-to-face basis in one of our offices. There is no printed form for this request; rather, restricted individuals create their own written statement of appeal, and submit it to a sole decision-maker in the regional office of the region where the restriction originated. The individuals may also provide additional documentation to support their appeal. Under 20 CFR 422.906, if the individual does not appeal the decision within the 60 days, if we restricted the individual prior to the effective date of this regulation, or if the appeal results in a denial, the individual has another opportunity to request review of the restriction after a three-year period. To submit this request for review, restricted individuals may re-submit a written appeal of the decision. The same criteria apply as for the original appeal: (1) It must be in writing; (2) it must go to a sole decision-maker in the regional office of the region where the restriction originated for review; and (3) it may accompany supporting documentation. We make this periodic review available to all restricted individuals once every three years. Respondents for this collection are individuals appealing their restrictions from in-person services at SSA field offices.

Type of Request: Extension of an OMB-approved information collection.

Regulation sections	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
20 CFR 422.905	75	1	15	19	*$19.01	**$361
20 CFR 422.906	75	1	20	25	*19.01	**475
Totals	150			44		**$836

*We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. Promoting Opportunity Demonstration—0960–0809. Section 823 of the Bipartisan Budget Act of 2015 required SSA to carry out the Promoting Opportunity Demonstration (POD) to test a new benefit offset formula for SSDI beneficiaries. Therefore, SSA is undertaking POD, a demonstration to evaluate the affect the new policy will have on SSDI beneficiaries and their families in several critical areas. We previously obtained OMB approval for this demonstration and are close to completing the project. In this information collection request, we are seeking to renew the approval for both the POD Monthly Earnings and Impairment-related work Expenses (IRWE) Reporting Form, and the POD End of Year reporting (EOYR) Documentation. The POD

implementation team collects earnings and IRWE data from POD treatment group subjects whose monthly earnings exceed the POD threshold. The POD implementation team submits the data it collects from treatment group subjects to SSA. SSA uses the data to apply the POD offset to treatment group subjects' SSDI benefits. Respondents have two options for reporting their earnings and IRWE documentation contained in the POD Monthly Form and the POD EOYR Form: Paper (mail or fax) or an online reporting portal. Respondents are encouraged to submit their earnings and IRWE documentation monthly but can submit it the following year in advance of SSA's end of year reconciliation process. While the collection of the earnings and IRWE data from respondents on the POD Monthly Form and the POD EOYR Forms is voluntary, failure to submit data could result in the inaccurate calculation of SSDI benefits.

Note: We have completed the survey portion of this demonstration project and expect to finish collecting the data by the end of the third quarter of fiscal year 2022.

Respondents are SSDI beneficiaries, who provided written consent before agreeing to participate in the study and whom we randomly assigned to one of the two study treatment groups.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
POD Monthly Earnings and Impairment-related work Expenses (IRWE) Reporting Form—Paper Version (faxed in)	1,000	6	6,000	40	4,000	* $27.07	** $108,280
POD Monthly Earnings and Impairment-related work Expenses (IRWE) Reporting Form—Internet Version	1,000	6	6,000	5	500	* 27.07	** 13,535
POD End of Year reporting (EOYR) Documentation	2,000	1	2,000	8	267	* 27.07	** 7,228
Totals	4,000		14,000		4,767		** 129,043

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

10. Tribal Council Coverage Agreement—0960–812. Section 218A of the Social Security Act grants voluntary Social Security coverage to Indian tribal council members. The coverage is voluntary for tribal council members; however, if the tribe wishes to obtain Social Security coverage, they must complete the agreement. Each tribe requesting coverage fills out one agreement. SSA employees collect this information via paper forms SSA–177 & SSA–177–OP1, Indian Tribal Council Coverage Agreement. The respondents are Indian tribal councils who wish to receive Social Security coverage for their members.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–177	6	1	10	1	* $19.01	** $19
SSA–177–OP1	6	1	10	1	* 19.01	** 19
Totals	12			2		** $38

* We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: November 23, 2021.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2021–25969 Filed 11–29–21; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11588]

30-Day Notice of Proposed Information Collection: Request for Overseas U.S. Citizen Vital Records Services

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 30, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument, and supporting documents to *PPTFormsOfficer@state.gov.* You must include the DS form number and information collection title.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Overseas U.S. Citizen Vital Records Services.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO/CS).
- *Form Number:* DS–5542.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 16,846.
- *Estimated Number of Responses:* 16,846.
- *Average Time per Response:* 40 minutes.
- *Total Estimated Burden Time:* 11,231 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Request for Overseas U.S. Citizen Vital Records Services is submitted to the Office of Record Management to request certified or authenticated copies of overseas U.S. citizen vital records such as Consular Reports of Birth/Death Abroad, Certificates of Witness to Marriage, and Panama Canal Zone documents pursuant to authorized requests. Requests for correction, amendment, or replacement of such vital records may be made using this form also.

Methodology

A PDF fillable form will be available on the Department's website, *travel.state.gov,* where it can be printed for manual signature and submission. The Request for Overseas U.S. Citizen Vital Records Services form may be submitted by mail to request certified or authenticated copies of overseas U.S. citizen vital records maintained by the Office of Record Management. Requests for correction, amendment, or replacement of such vital records may be made using this form also.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2021–26011 Filed 11–29–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11584]

30-Day Notice of Proposed Information Collection: Request for Authentication Service in the United States

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 30, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You must include the DS form number (DS–4194), information collection title, and the OMB control number in any correspondence (if applicable). Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument, and supporting documents to *PPTFormsOfficer@state.gov.* You must include the DS form number (DS–4194) and information collection title.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Authentications Service DS–4194.
- *OMB Control Number:* None.
- *Type of Request:* Existing Information Collection Request without OMB Control Number.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS–4194.
- *Respondents:* This information collection will be used by members of the public who wish to authenticate a document in the United States.
- *Estimated Number of Respondents:* 47,094.
- *Estimated Number of Responses:* 47,094.

• *Average Time per Response:* 10 minutes.

• *Total Estimated Burden Time:* 7,849 hours.

• *Frequency:* Information is requested only when an applicant submits the form to obtain a benefit.

• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The form created by this information collection (DS–4194) will be used to request authentications services from the Authentications Office of the U.S. Department of State in the United States. In accordance with 22 CFR part 131, the Office of Authentications provides authentication services for federal public documents that will be used overseas. These services support individuals, commercial organizations, institutions, and federal and state government agencies seeking to use certain documents abroad.

Methodology

The form will be downloaded from *http://eforms.state.gov.* After completion, the form may be submitted by mail or hand-delivery.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2021–26008 Filed 11–29–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Health Coverage Tax Credit Reimbursement Request Form

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the health coverage tax credit reimbursement request form.

DATES: Written comments should be received on or before January 31, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: The Health Coverage Tax Credit (HCTC) Reimbursement Request Form.

OMB Number: 1545–2152.

Form Number: Form 14095.

Abstract: This form will be used by HCTC participants to request reimbursement for health plan premiums paid prior to the commencement of advance payments.

Current Actions: There are no changes to the form at this time, however the agency has updated the number of responses based on most recent filing data. There has been an estimated increase of 358 responses, resulting in an overall hourly burden increase of 239 hours (2039 to 2278).

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,416.

Estimated Time per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 2,278 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 23, 2021.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2021–25976 Filed 11–29–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; CARES Act Air Carrier Loan and Payroll Support Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before January 31, 2022.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including

suggestions for reducing the burden, by any of the following methods:

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2021–0017 and the specific Office of Management and Budget (OMB) control numbers 1505–0263.

• *Mail:* Treasury PRA Clearance Officer, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: For questions related to these programs, please contact Kristin Murphy by emailing *kristin.murphy@treasury.gov,* or calling 202–622–9688. Additionally, you can view the information collection requests at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: CARES Act Air Carrier Loan and Payroll Support Programs.

OMB Control Number: 1505–0263.

Type of Review: Extension of a currently approved collection.

Description: On March 27, 2020, the President signed the ''Coronavirus Aid, Relief, and Economic Security Act'' or the ''CARES Act'' (Pub. L. 116–136), which provides emergency assistance and health care response for individuals, families and businesses affected by the COVID–19 pandemic, and provides emergency appropriations to support executive branch agency operations during the COVID–19 pandemic. The CARES Act authorized the Secretary of the Treasury to make loans, loan guarantees, and other investments that do not exceed $500 billion in the aggregate to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus. Section 4003(b)(1)–(3) authorized the Secretary to make loans and loan guarantees available to passenger air carriers and cargo air carriers, as well as certain related businesses, and businesses critical to maintaining national security. Section 4112 authorized the Secretary to provide payroll support totaling $32 billion to air carriers and certain contractors (PSP1). While Treasury is no longer accepting loan program or PSP1 applications, both programs include ongoing compliance reporting and recordkeeping requirements.

On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021 or the ''Appropriations Act,'' which provides additional emergency assistance and health care response for individuals, families and businesses affected by the COVID–19 pandemic. Subtitle A of Title IV of Division N of the Appropriations Act (the PSP Extension Law) authorizes the Secretary to provide financial assistance totaling $16 billion to passenger air carriers and certain contractors (PSP2).

On March 11, 2021, the President signed the American Rescue Plan Act, 2021, which provided additional emergency assistance and economic relief in response to the COVID–19 pandemic. Subtitle C of Title VII of the American Rescue Plan Act authorizes the Secretary to provide financial assistance totaling $15 billion to passenger air carriers and certain contractors that received financial assistance under PSP2 (PSP3).

As part of the loan, PSP1, PSP2, and PSP3 agreements, applicants will need to maintain records for a period of five years or more, depending on the agreement type and period of performance, as well as submit compliance reports quarterly to ensure funding is used in accordance with the agreements and aid statutory reporting requirements.

Form: Applications, Agreements, and associated Forms; Compliance Reporting Forms.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,300.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 3,400.

Estimated Time per Response: 4.25 hours.

Estimated Total Annual Burden Hours: 13,070.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 23, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–25993 Filed 11–29–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Veterans Health Administration (VHA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is modifying the system of records entitled ''Ethics Consultation Web-based Database (ECWeb)-VA'' (152VA10P6). VA is modifying the system by revising the System Name; System Number; System Location; Purpose of the System; Categories of Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; Policies and Practices for Retention and Disposal of Records; and Physical, Procedural, and Administrative Safeguards. VA is republishing the system notice in its entirety.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Ethics Consultation Web-based Database (ECWeb)-VA (152VA10P6)''. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810

Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The System Name will be changed from ''Ethics Consultation Web-based Database (ECWeb)-VA'' to ''IntegratedEthics Web Database (IEWeb)-VA''. The System Number will be changed from 152VA10P6 to 152VA10 to reflect the current VHA organizational routing symbol.

The System Location is being updated to remove automated records within ECWeb maintained on a VA server administered by VA, 810 Vermont Avenue NW, Washington, DC. This section will include IntegratedEthics Web Database (IEWeb) may be maintained on Salesforce Development Platform (SFDP) VA and is hosted in a Federal Risk Authorization Management Program (FedRAMP) certified cloud, as administered by Salesforce at 44521 Hastings Dr., Building 90, Ashburn, VA 20147.

The Purpose is being modified to include ethics quality improvement and documenting ethics activities that do not relate to ethics consultation or ethics quality improvement but are important for the ethical culture and environment of VHA.

The Categories of Records in the System is being modified to include: 2. Preventive Ethics (PE) records document work done to address recurring ethical concerns by applying quality improvement methods to identify and address ethics gaps on a systems level including intake forms and project record forms. PE records may include the name and contact information of VA employees as well as information about ethical standards, best ethics practices, current state, ethics quality gap, improvement goals, domains and topics, impact on patients and/or staff, prioritization, results, volume or scope of effect. 3. Ethics Activity Log (EAL) records document education, training, clinical and administrative rounding, referrals and other ethics activities that do not relate to ethics consultation or preventive ethics activities. EAL records may include the name and contact information of VA employees as well as information such as a description of the ethics activity, domain, topic, time spent.

The Record Source Categories is being modified to include ''Patient Medical Records-VA'' (24VA10A7), ''Veterans Health Information System and Technology Architecture (VistA) Records-VA'' (79VA10), and electronic health record systems.

The Routine Uses of Records Maintained in the System will delete routine use #20, which was a duplicate of Routine Use #2. The following Routine Uses will be deleted:

8. Relevant health care information may be disclosed to a non-VA nursing home facility that is considering the patient for admission, when information concerning the individual's medical care is needed for the purpose of preadmission screening under 42 CFR 483.20(f), for the purpose of identifying patients who are mentally ill or mentally retarded, so they can be evaluated for appropriate placement.

9. Relevant health care information may be disclosed to a State Veterans Home for the purpose of medical treatment and/or follow-up at the State Home when VA makes payment of a per diem rate to the State Home for the patient receiving care at such home, and the patient receives VA medical care.

10. Relevant health care information may be disclosed to (a) A Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services; or (b) a Federal agency or a non-VA hospital (Federal, state and local, public or private) or other medical installation having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services, or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit or, for VA to effect recovery of the costs of the medical care.

The following Routine Uses will be added:

8. VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.

9. VA may disclose information to: (1) A Federal agency or health care provider when VA refers a patient for medical and other health services, or authorizes a patient to obtain such services and the information is needed by the Federal agency or health care provider to perform the services; or (2) a Federal agency or to health care provider under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment or follow-up, determination of eligibility for benefits, or recovery by VA of the costs of the treatment.

10. VA may disclose information to the National Practitioner Data Bank at the time of hiring or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention, or termination of the applicant or employee.

The following Routine Uses will be modified.

15. VA may disclose information to the DoJ or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

16. VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

Policies and Practices for Storage of Records is being modified to remove copies of back up computer filed being maintained at an off-site location. This section will include that records are maintained on the VA Salesforce Government Cloud (*i.e.,* Federal Risk Authorization Management Program (FedRAMP) certified cloud).

Policies and Practices for Retention and Disposal of Records is being modified to replace Record Control Schedule (RCS) 10–1 Item #XLIII–2, with RCS 10–1 item 6000.2. Also, General Records Schedule (GRS) 25 Items 1.a and 1.b (N1–GRS–01–1 item 1a & 1b) will be replaced with, GRS 2.8 Item 010.

Physical, Procedural, and Administrative Safeguards (Access) is being modified to remove: 1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel. 2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in ECWeb may be accessed by authorized VA employees. Access to file information is controlled at two levels; the systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file, which is needed in the performance of their official duties. Information that is downloaded from ECWeb and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes. 3. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and Veteran Integrated Service Networks. Access is controlled by individually unique passwords/codes, which must be changed periodically by the employee. This section will now state, Salesforce Government Cloud is maintaining underlying physical infrastructure. Additional Interconnection Security Agreement (ISA) and Memorandum of Understanding (MOU) are required between the VA and VA designated contractors/vendors that own the data that is stored or processed within Salesforce Development Platform VA. The vendor-specific agreements will describe the data ownership and storage requirements. The parties agree that transmission, storage and management of VA sensitive information residing in the Salesforce Development Platform VA is the sole responsibility of VA employees or designated contractors/vendors assigned to manage the system. At no time will Salesforce Government Cloud have any access to VA data residing within the Salesforce Development Platform VA. Thus, all agreements on data and system responsibilities shall not be covered in this base agreement (*i.e.,* MOU). However, Salesforce Government Cloud shall provide the tools to allow VA to properly secure all systems and data hosted in the Salesforce Development Platform VA.

The Report of Intent to Modify a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Neil C. Evans, M.D., Chief Officer, Connected Care, Performing the Delegable Duties of the Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on October 19, 2021 for publication.

Dated: November 24, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Integrated Ethics Web Database (IEWeb)—VA (152VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Automated records within the IntegratedEthics Web Database (IEWeb) may be maintained on Salesforce Development Platform (SFDP) VA and is hosted in a Federal Risk Authorization Management Program (FedRAMP) certified cloud, as administered by Salesforce at 44521 Hastings Dr., Building 90, Ashburn, VA 20147.

SYSTEM MANAGER(S):

Official responsible for policies and procedures: Toby Schonfeld, Ph.D., Executive Director, National Center for Ethics in Health Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone (202) 461–1750 (Note: This is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C., 501(b), 304, 7301, and 7304(a).

PURPOSE(S) OF THE SYSTEM:

The records may be used for such purposes as: Education about ethics consultation; ongoing treatment of the patient; documentation of treatment provided; payment; healthcare operations such as producing various management and patient follow-up reports; responding to patient and other inquiries; for ethics quality improvement; for documenting ethics activities that do not relate to ethics consultation or ethics quality improvement but are important for the ethical culture and environment of VHA; for epidemiological research and other healthcare related studies; statistical analysis, resource allocation and planning; providing clinical and administrative support to patient healthcare; audits, reviews and investigations conducted by staff of the healthcare facility, the VISN's, VA Central Office, and the VA Office of Inspector General (OIG); sharing of health information between and among VHA, Department of Defense (DoD), Indian Health Services (IHS), and other government and private industry healthcare organizations; quality

improvement/assurance audits, reviews and investigations; personnel management and evaluation; employee ratings and performance evaluations, and employee disciplinary or other adverse action, including removal; advising healthcare professional licensing or monitoring bodies or similar entities of activities of VA and former VA healthcare personnel; and, accreditation of a VA healthcare facility by an entity such as The Joint Commission (TJC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning.

1. Veterans who have applied for healthcare services under Title 38, U.S.C., Chapter 17, and members of their immediate families.

2. Spouse, surviving spouse, and children of Veterans who have applied for healthcare services under Title 38, U.S.C., Chapter 17.

3. Other requesters or participants from outside VA for whom personal information will be collected.

4. Individuals examined or treated under contract or resource sharing agreements.

5. Individuals examined or treated for research or donor purposes.

6. Individuals who have applied for Title 38 benefits, but who do not meet the requirements under Title 38 to receive such benefits.

7. Individuals who were provided medical care under emergency conditions for humanitarian reasons.

8. Pensioned members of allied forces provided healthcare services under Title 38, U.S.C., Chapter I.

9. Current and former employees.

10. Contractors employed by VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three types of records in IEWeb:

1. Ethics Consultation (EC) records document the consultation request, relevant consultation specific information, a summary of the information including the ethical analysis and moral deliberation, the explanation of the findings to relevant parties, and support of the consultation process. EC records also include related notes and attachments.

These records may include information related to ethics consultations performed in and for VHA healthcare facilities. Information may include relevant information from a health record (*e.g.,* a cumulative account of sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric information compiled by VA professional staff and non-VA healthcare providers); subsidiary record information (*e.g.,* tumor registry, dental, pharmacy, nuclear medicine, clinical laboratory, radiology, and patient scheduling information); identifying information (*e.g.,* name, address, date of birth, partial Social Security number), military service information (*e.g.,* dates, branch and character of service, service number, health information), family or authorized surrogate information (*e.g.,* next-of-kin and person to notify in an emergency), employment information (*e.g.,* occupation, employer name and address), and information pertaining to the individual's medical, surgical, psychiatric, dental, and/or treatment (*e.g.,* information related to the chief complaint and history of present illness; information related to physical, diagnostic, therapeutic, special examinations, clinical laboratory, pathology and x-ray findings, operations, medical history, medications prescribed and dispensed, treatment plan and progress, consultations; photographs taken for identification and medical treatment, education and research purposes; facility locations where treatment is provided; observations and clinical impressions of healthcare providers to include identity of providers and to include, as appropriate, the present state of the patient's health, an assessment of the patient's emotional, behavioral, and social status, as well as an assessment of the patient's rehabilitation potential and nursing care needs). In addition, EC records may include the name(s) and contact information of healthcare providers, and information regarding healthcare rendered by those providers.

2. Preventive Ethics (PE) records document work done to address recurring ethical concerns by applying quality improvement methods to identify and address ethics gaps on a systems level including intake forms and project record forms. PE records may include the name and contact information of VA employees as well as information about ethical standards, best ethics practices, current state, ethics quality gap, improvement goals, domains and topics, impact on patients and/or staff, prioritization, results, volume or scope of effect.

3. Ethics Activity Log (EAL) records document education, training, clinical and administrative rounding, referrals and other ethics activities that do not relate to ethics consultation or preventive ethics activities. EAL records may include the name and contact information of VA employees as well as information such as a description of the ethics activity, domain, topic, and time spent.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the patient, family members or accredited representative, and friends, authorized surrogates, healthcare agents, employees, contractors, medical service providers, and various automated systems providing clinical and managerial support at VA healthcare facilities, ''Patient Medical Records-VA'' (24VA10A7), ''Veterans Health Information System and Technology Architecture (VistA) Records-VA'' (79VA10), and VA electronic health record systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system may include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the Human Immunodeficiency Virus, that information may not be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. VA may disclose information to Federal, state, and local government agencies and national health organizations as reasonably necessary to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

2. Information may be disclosed by appropriate VA personnel to the extent necessary, on a need-to-know basis, and consistent with good medical-ethical practices, to family members or the persons with whom the patient has a meaningful relationship.

3. VA may disclose information relevant to a claim of a Veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, only at the request of the claimant to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA.

4. VA may disclose information to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and courts, boards, or commissions as relevant and necessary to aid VA in the preparation, presentation, and prosecution of claims authorized by law.

5. VA may disclose information from this system to epidemiological and other research facilities approved by the Under Secretary for Health for research purposes determined to be necessary and proper, provided that the names and addresses of Veterans and their dependents will not be disclosed unless those names and addresses are first provided to VA by the facilities making the request.

6. VA may disclose information to another Federal agency, court, or party in litigation before a court or in an administrative proceeding conducted by a Federal agency, when the government is a party to the judicial or administrative proceeding.

7. Information concerning a non-judicially declared incompetent patient may be disclosed to a third party upon the written request of the patient's next-of-kin in order for the patient, or, consistent with the best interest of the patient, a member of the patient's family, to receive a benefit to which the patient or family member is entitled or to arrange for the patient's discharge from a VA medical facility. Sufficient data to make an informed determination will be made available to such next-of-kin. If the patient's next-of-kin is not reasonably accessible, the Chief of Staff, Director, or designee of the custodial VA medical facility may disclose the information for these purposes.

8. VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.

9. VA may disclose information to: (1) A Federal agency or health care provider when VA refers a patient for medical and other health services, or authorizes a patient to obtain such services and the information is needed by the Federal agency or health care provider to perform the services; or (2) a Federal agency or to health care provider under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment or follow-up, determination of eligibility for benefits, or recovery by VA of the costs of the treatment.

10. VA may disclose information to the National Practitioner Data Bank at the time of hiring or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention, or termination of the applicant or employee.

11. Information from an IEWeb record which relates to the performance of a healthcare student or provider may be disclosed to a medical or nursing school, or other healthcare related training institution, or other facility with which there is an affiliation, sharing agreement, contract, or similar arrangement when the student or provider is enrolled at or employed by the school or training institution, or other facility, and the information is needed for personnel management, rating and/or evaluation purposes.

12. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

13. VA may disclose information 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.

14. VA may disclose information to National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

15. VA may disclose information to the DoJ or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

16.VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

17. VA may disclose information to other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

18. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

19. VA may disclose information to survey teams of The Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has

a contract or agreement to conduct such reviews, as relevant and necessary for the purpose of program review or the seeking of accreditation or certification.

20. VA may disclose ethics consultation records to groups (*e.g.,* American Society for Bioethics and the Humanities) performing improvement or quality assessments as part of approved research or quality improvement projects with respect to ethics consultation practices.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on the VA Salesforce Government Cloud (*i.e.,* Federal Risk Authorization Management Program (FedRAMP) certified cloud). Subsidiary record information is maintained at the various respective IntegratedEthics services within the VHA healthcare facility and by individuals, organizations, and/or agencies with whom VA has a contract or agreement to perform such services, as the VA may deem practicable.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by record number, name of ethics consultant and other VA staff, requester, ethics domain or topic, facility, keywords or phrases.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records that are stored within Computerized Patient Record System (CPRS) and Veterans Health Information Systems and Technology Architecture (VistA) will be maintained in accordance with Record Control Schedule (RCS) 10–1 Item 6000.2, Electronic Health Records, NARA job# N1–15–02–3. All other records maintained outside the Electronic Health Record will be maintained in accordance with General Records Schedule (GRS) 2.8 Ethics Program Records Item 010.

ADMINSITRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Salesforce Government Cloud is maintaining underlying physical infrastructure. Additional ISA and MOU are required between the VA and VA designated contractors/vendors that own the data that is stored or processed within Salesforce Development Platform VA. The vendor-specific agreements will describe the data ownership and storage requirements. The parties agree that transmission, storage and management of VA sensitive information residing in the Salesforce Development Platform VA is the sole responsibility of VA employees or designated contractors/vendors assigned to manage the system. At no time will Salesforce Government Cloud have any access to VA data residing within the Salesforce Development Platform VA. Thus, all agreements on data and system responsibilities shall not be covered in this base agreement (*i.e.,* MOU). However, Salesforce Government Cloud shall provide the tools to allow VA to properly secure all systems and data hosted in the Salesforce Development Platform VA.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA healthcare facility location where they are or were employed or made contact or they may write to the National Center for Ethics in Health Care at 810 Vermont Avenue NW, Washington, DC 20420.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

Individuals seeking information regarding access to and contesting of IEWeb records may write, call, or visit the last VA healthcare facility where healthcare was provided or by writing to the National Center for Ethics in Health Care at 810 Vermont Avenue NW, Washington, DC 20420.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 81 FR 5033 dated January 29, 2016.

[FR Doc. 2021–26026 Filed 11–29–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0609]

Agency Information Collection Activity Under OMB Review: Survey of Veteran Enrollees' Health and Use of Health Care

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0609.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0609'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Survey of Veteran Enrollees' Health and Use of Health Care.

OMB Control Number: 2900–0609.

Type of Review: Extension of a currently approved collection.

Abstract: The VA Survey of Veteran Enrollees' Health and Use of Health Care gathers information from Veterans enrolled in the VA Health Care System about factors that influence their health care utilization choices. Data collected are used to gain insights into Veteran preferences and to provide VA and Veterans Health Administration (VHA) management guidance in preparing for future Veteran needs. In addition to factors influencing health care choices, the data collected include enrollees' perceived health status and need for assistance, available insurances, self-reported utilization of VA services versus other health care services, reasons for using VA, barriers to seeking care, ability and comfort level with accessing virtual care, as well as general demographics and family characteristics that may influence utilization but cannot be accessed elsewhere. Information provided through the survey supports critical VA policy decisions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: 86 FR 182 on September 23, 2021, pages 52948 and 52949.

Affected Public: Individuals and households.

Estimated Annual Burden: 14,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 42,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–25961 Filed 11–29–21; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1302

Vaccine and Mask Requirements To Mitigate the Spread of COVID–19 in Head Start Programs; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AC90

Vaccine and Mask Requirements To Mitigate the Spread of COVID–19 in Head Start Programs

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment (IFC) adds new provisions to the Head Start Program Performance Standards to mitigate the spread of the coronavirus disease 2019 (COVID–19) in Head Start programs. This IFC requires effective upon publication, universal masking for all individuals two years of age and older, with some noted exceptions, and all Head Start staff, contractors whose activities involve contact with or providing direct services to children and families, and volunteers working in classrooms or directly with children to be vaccinated for COVID–19 by January 31, 2022.

DATES:

Effective date: This IFC is effective on November 30, 2021.

Compliance date: The compliance date for the mask requirement is the date of publication of the rule, November 30, 2021. The compliance date for the vaccine requirement is January 31, 2022. For more information, *see* **SUPPLEMENTARY INFORMATION**.

Comment date: To be assured consideration, comments on this interim final rule must be received on or before December 30, 2021.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Head Start, Attention: Director of Policy and Planning, 330 C Street SW, 4th Floor, Washington, DC 20201.

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

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, OHS, at *HeadStart@eclkc.info* or 1–866–763–6481. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: The compliance date for the vaccine requirement is January 31, 2022. This means *staff, certain contractors and volunteers* must have their second dose in a two-dose series, or first dose in a single-dose by January 31, 2022. Full vaccination requires 14 days after a two-dose series such as Pfizer or Moderna or 14 days after a single-dose series like Johnson & Johnson, but for purposes of this regulation, staff, certain contracts and volunteers will meet the requirement even if they have not yet completed the 14-day waiting period required for full vaccination. This timing flexibility applies only to the initial implementation of this IFC and has no bearing on ongoing compliance.

Table of Contents

I. Tribal Consultation Statement

ACF conducts an average of five tribal consultations each year for tribes operating Head Start and Early Head Start. The consultations are held in four geographic areas across the country: Southwest, Northwest, Midwest (Northern and Southern), and East. The consultations are often held in conjunction with other tribal meetings or conferences, to ensure the opportunity for most of the 150 tribes that operate Head Start and Early Head Start programs to attend and voice their concerns regarding service delivery. We complete a report after each consultation, and then we compile a final report that summarizes the consultations. We submit the report to the Secretary of Health and Human Services (the Secretary) at the end of the year. We invite public comment on this IFC if there are concerns specific to Native communities and programs.

II. Statutory Authority

ACF publishes this interim final rule under the authority granted to the Secretary by sections 641A(a)(1)(C), (D) and (E) of the Head Start Act, 42 U.S.C. 9836a(a)(1)(C)–(E)), (D) and (,), as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134).

III. Executive Summary

A. Purpose of the Interim Final Rule

SARS–CoV–2, the infectious agent that causes COVID–19, is considered to be mainly transmissible through exposure to respiratory droplets when a person is in close contact with someone who has COVID–19. Correct and consistent facemask use has been critical in reducing the risk of droplet transmission of SARS–CoV–2.[1] [2] Vaccination is the most important measure for reducing risk for SARS–CoV–2 transmission and in avoiding severe illness, hospitalization, and death.[3]

Four primary variants of SARS–CoV–2 have emerged to date. Of these, the Delta variant has been of particular concern as it causes more infections and spreads faster than other variants.[4] While the Delta variant has increased levels of transmissibility, COVID–19 vaccination remains highly effective against hospitalization and death. Although there are cases of SARS–CoV–2 infections among vaccinated individuals,[5] fully vaccinated adults were six times less likely to become infected, twelve times less likely to be hospitalized and eleven times less likely to die from COVID–19 compared to unvaccinated adults according to data from August 2021.[6] [7] While studies are still ongoing, preliminary data suggest that vaccinated persons infected with the Delta variant are potentially less infectious, and infectious for shorter

[1] *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html.*

[2] *https://www.osha.gov/coronavirus/safework.*

[3] *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html.*

[4] Centers for Disease Control and Prevention. ''Delta Variant: What We Know About the Science.'' August 26, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html.*

[5] Trends in COVID–19 Cases, Emergency Department Visits, and Hospital Admissions Among Children and Adolescents Aged 0–17 Years—United States, August 2020–August 2021 | MMWR.

[6] *https://covid.cdc.gov/covid-data-tracker/#rates-by-vaccine-status* MMWR Morb Mortal Wkly Rep 2021;70:1255–1260. DOI: *http://dx.doi.org/10.15585/mmwr.mm7036e2.*

[7] *https://covid.cdc.gov/covid-data-tracker/#covidnet-hospitalizations-vaccination.*

periods of time compared to infected unvaccinated persons.[8] [9] [10] [11] [12] [13]

The purpose of this IFC is to protect the health and safety of Head Start staff, children, and families and to mitigate the spread of SARS–CoV–2 in Head Start programs. It requires: (1) Universal masking for all individuals two years of age and older, with some noted exceptions, effective immediately upon publication of this rule), (2) vaccination for COVID–19 by January 31, 2022, with some noted exemptions, for all Head Start program staff, inclusive of Head Start, Early Head Start, and Early Head Start-Child Care Partnerships, certain contractors, and volunteers in classrooms or working directly with children (hereafter referred to as ''Head Start staff''), and (3) for those granted an exemption to the requirement specified in (2), at least weekly testing for current SARS–CoV–2 infection. The requirements in this IFC will reduce the risk of transmission of SARS–CoV–2 in classrooms, which will protect the health and safety of children, reduce closures of Head Start programs, which can cause hardship for families, and support the Administration's priority of sustained in-person early care and education that is safe for children—with all of its known benefits to children and families.[14]

Greater understanding about the spread of SARS–CoV–2, the increased risk to certain populations, the benefits of masking, and the safety and efficacy of vaccines demonstrates the need for widespread masking and vaccination to reduce COVID–19 and its impacts. Although COVID–19 cases had begun to decline in parts of the country following the most recent COVID–19 surge, data indicate cases are beginning to rise in other parts—particular northern states where the weather has begun to turn colder,[15] and the future trajectory of the pandemic is unclear. The Delta variant is currently the predominant variant in the United States and has resulted in greater rates of cases and hospitalizations among children than from other variants.[16] [17] [18] Furthermore, there is potential for the rapid and unexpected development and spread of additional new and more transmissible variants. Experience with the Delta variant suggests that we must take adequate steps to prevent transmission and protect the workforce and children to avoid serious harm.[19] It is critical that all Head Start staff get fully vaccinated for COVID–19 and consistently wear masks to protect children, staff, and families from exposure to SARS–CoV–2 and to reduce the risk of transmission to families of Head Start children and staff who may be at risk for increased morbidity and mortality from COVID–19.

This IFC adds provisions to the Head Start Program Performance Standards to impose three requirements:

(1) Universal masking, with some noted exceptions, for all individuals two years of age and older when there are two or more individuals in a vehicle owned, leased, or arranged by the Head Start program; when they are indoors in a setting where Head Start services are provided; and, for those not fully vaccinated, outdoors in crowded settings or during activities that involve close contact with other people. This requirement is effective immediately.

(2) Vaccination for COVID–19 for Head Start program staff, certain contractors and volunteers by January 31, 2021.

(3) For those granted an exemption to the requirement specified in (2), at least weekly testing for current SARS–CoV–2 infection.

Being fully vaccinated for COVID–19 and using a mask are two of the most effective mitigation strategies available to reduce transmission of SARS–CoV–2.[20] Additionally, including a regular SARS–CoV–2 testing requirement for those approved for an exemption from the vaccination requirement is necessary to identify infected employees and separate them from the workplace to prevent transmission and to facilitate early medical intervention, when appropriate. Fully vaccinated staff are at much lower risk of infection and therefore, pose lower transmission risk to the young unvaccinated children in their care. The CDC recommends screening testing for current infection of unvaccinated asymptomatic workers as a useful tool to detect SARS–CoV–2 and stop transmission quickly.[21]

B. Interim Final Rule Justification

Section 641A of the Head Start Act authorizes the Secretary to ''modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs,'' including ''administrative and financial management standards,'' ''standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate) for such agencies, and programs,'' and ''such other standards as the Secretary finds to be appropriate,'' 42 U.S.C. 9836a§ 9836a(a)(1)(C),(D), (E). In developing these modifications, the

[8] Chia PY, Ong SWX, Chiew C, et al. Virological and serological kinetics of SARS–CoV–2 Delta variant vaccine-breakthrough infections: a multi-center cohort study. medRxiv. 2021;*https://www.medrxiv.org/content/10.1101/2021.07.28.21261295v1*.

[9] Shamier MC, Tostmann A, Bogers S. Virological characteristics of SARS–CoV–2 vaccine breakthrough infections in health care workers. medRxiv. 2021;*https://www.medrxiv.org/content/10.1101/2021.08.20.21262158v1*.

[10] Kang M, Xin H, Yuan J. Transmission dynamics and epidemiological characteristics of Delta variant infections in China. medRxiv. 2021;*https://www.medrxiv.org/content/10.1101/2021.08.12.21261991v1*.

[11] Ong SWX, Chiew CJ, Ang LW, et al. Clinical and Virological Features of SARS-CoV–2 Variants of Concern: A Retrospective Cohort Study Comparing B.1.1.7 (Alpha), B.1.315 (Beta), and B.1.617.2 (Delta). Preprints with The Lancet. 2021;*https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3861566*.

[12] Mlcochova P KS, Dhar MS, et al. . SARS–CoV–2 B.1.617.2 Delta variant emergence and vaccine breakthrough. Research Square. 2021 *https://www.researchsquare.com/article/rs-637724/v1*.

[13] *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html*

[14] Barr, A.C., & Gibbs, C. (2019). *Breaking the Cycle? Intergenerational Effects of an Anti-Poverty Program in Early Childhood*. EdWorkingPaper: 19–141. Retrieved from Annenberg Institute at Brown University, *https://edworkingpapers.com/sites/default/files/ai19-141.pdf*.; Bauer, L., & Schanzenbach, D.W. (2016). *The Long-Term Impact of the Head Start Program*. Washington, DC: The Brookings Institute. Retrieved from: *https://www.hamiltonproject.org/assets/files/long_term_impact_of_head_start_program.pdf*.; Ludwig, J., & Phillips, D. (2007). The Benefits and Costs of Head Start. *Social Policy Report, Vol. 21*(3), Society for Research in Child Development. Retrieved from: *https://files.eric.ed.gov/fulltext/ED521701.pdf*.; Garcia, J.L., Heckman, J.J., Leaf, D.E., & Prados M.J. (2019). Quantifying the Life-cycle Benefits of a Prototypical Early Childhood Program. National Bureau of Economic Research Working Paper No. 23479. Cambridge, MA: NBER. Retrieved from: *https://heckmanequation.org/www/assets/2017/01/w23479.pdf*.; Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M. (2013). *Investing in Our Future: The Evidence Base on Preschool Education*. Society for Research in Child Development and Foundation for Child Development. Retrieved from: *http://www.fcd-us.org/assets/2013/10/Evidence20Base20on20Preschool20Education20FINAL.pdf*.

[15] *https://covid.cdc.gov/covid-data-tracker/#trends_dailycases*.

[16] Delahoy, M., et al. Hospitalizations Associated with COVID–19 Among Children and Adolescents—COVID–Net, 14 States, March 1, 2020—August 14, 2021, *https://www.cdc.gov/mmwr/volumes/70/wr/mm7036e2.htm*.

[17] Siegel DA, Reses HE, Cool AJ, et al. Trends in COVID–19 Cases, Emergency Department Visits, and Hospital Admissions Among Children and Adolescents Aged 0–17 Years—United States, August 2020—August 2021.

[18] *https://covid.cdc.gov/covid-data-tracker/#demographicsovertime*.

[19] Centers for Disease Control and Prevention. ''Delta Variant: What We Know About the Science.'' August 26, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html*.

[20] Centers for Disease Control and Prevention. ''Science Brief: COVID–19 Vaccines and Vaccination.'' September 15, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html#:~:text=Evidence%20suggests%20the%20US%20COVID,interrupting%20chains%20of%20transmission*.

[21] Centers for Disease Control. ''Overview of Testing for SARS–CoV–2 (COVID–19)'' October 22, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html*.

Secretary included relevant considerations pursuant to section 641A(a)(2) of the Head Start Act, 42 U.S.C. 9836a(a)(2). The Secretary consulted with experts in child health, including pediatricians, a pediatric infectious disease specialist, and the recommendations of the CDC and FDA. The Secretary considered the Office of Head Start's past experience with the longstanding health and safety Head Start Program Performance Standards that have sought to protect Head Start staff and participants from communicable and contagious diseases. The Secretary also considered the circumstances and challenges typically facing children and families served by Head Start agencies including the disproportionate effect of COVID–19 on low-income communities served by Head Start agencies and the potential for devastating consequences for children and families of program closures and service interruptions due to SARS–CoV–2 exposures. The Secretary finds it necessary and appropriate to set health and safety standards for the condition of Head Start facilities that ensure the reduction in transmission of the SARS–CoV–2 and to avoid severe illness, hospitalization, and death among program participants.

ACF initially chose, among other actions, to allow Head Start programs to decide whether or not to require staff vaccination rather than require vaccination, to provide information on the COVID–19 vaccine through its Early Childhood Learning and Knowledge Center,[22] the website used to share guidance and information with Head Start grant recipients, and to emphasize that grant recipients can use COVID–19 response funds and American Rescue Plan funds to support staff in getting the COVID–19 vaccine. However, despite all of these efforts, uptake of vaccination among Head Start staff has not been as robust as hoped for and has been insufficient to create a safe environment for children and families. This is particularly true given the advent of the Delta variant and the potential for new variants and as programs continue to return to fully in-person services as the Office of Head Start expects in January 2022. The Office of Head Start (OHS) issued guidance to programs on May 20, 2021 outlining its expectations for programs in the 2021–2022 program year. This guidance prepared programs for the resumption of in-person services and informed programs that they should build toward full enrollment and provide comprehensive services for all enrolled children as soon as possible. It noted that beginning January 2022, OHS intends to reinstate pre-pandemic practices for tracking and monitoring enrollment. OHS will also resume evaluating which programs enter into the Full Enrollment Initiative in January 2022, which is a process by which OHS identifies programs that are not serving their full funded enrollment. This guidance followed a period since the onset of the pandemic of greater flexibility for programs with requirements related to enrollment, service duration, virtual/remote delivery of services, among others. These flexibilities were critical to programs' ability to continue providing services to children and families and to adapt services based on the changing health conditions in their communities during unprecedented times. As programs prepare for fully in-person services, it is imperative that we create conditions that support the health and safety of children and reduce program closures and service interruptions. The universal masking and vaccination requirements outlined in this IFC are critical to this effort.

The U.S. Centers for Disease Control and Prevention (CDC) issued guidance July 27, 2021.[23] The CDC stated that the rationale for this guidance was twofold: (1) An alarming rise in COVID–19 cases and hospitalization rates around the country—a reversal in what had been a steady decline since January 2021[24] and (2) new data showing the Delta variant to be highly transmissible.[25] A study covering the period from June to mid-August 2021 showed that weekly COVID–19 associated hospitalization rates among children and adolescents rose nearly five-fold during the late June to mid-August 2021 period, which coincided with increased circulation of the Delta variant.[26] In this same study, hospitalization rates were 10 times higher among unvaccinated than fully vaccinated adolescents. A separate study conducted in the United Kingdom showed that vaccination effectively reduces the risk of Delta variant infection[27] but that ''vaccination alone is not sufficient to prevent all transmission of the delta variant in the household setting, where exposure is close and prolonged.'' The authors recommended nonpharmaceutical interventions, such as mask wearing, as an important complementary approach alongside vaccination to minimize spread of the Delta variant.

On November 10, 2021, the CDC issued updated guidance to early childhood education and child care (ECE) programs.[28] One of the key changes in the guidance is the recommendation for universal indoor masking for ECE programs for everyone aged 2 years and older regardless of vaccination status, with limited exceptions, see section V *Provisions of the Interim Final Rule.* It also notes that ECE program staff can model consistent and correct use for children aged 2 years or older in their care. Vaccinations and masks are key strategies for reducing the transmission of SARS–CoV–2 along with other risk reduction strategies, including staying home if sick; handwashing; improving ventilation; screening and diagnostic testing, cleaning, and disinfecting; keeping physical distance; and cohorting,[29] especially because physical distancing is not always feasible in early childhood settings.[30]

The COVID–19 vaccines are the safest and most effective way to protect individuals and the people with whom they live and work from infection and

[22] Office of Head Start. ''OHS COVID–19 Updates.'' Available at: *https://eclkc.ohs.acf.hhs.gov/about-us/coronavirus/ohs-covid-19-updates.*

[23] *Centers for Disease Control and Prevention. ''Science Brief: COVID–19 Vaccines and Vaccination.'' September 15, 2021. Available at: https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html#:~:text=Evidence%20suggests%20the%20US%20COVID,interrupting%20chains%20of%20transmission.*

[24] Centers for Disease Control and Prevention. ''COVID Data Tracker.'' Available at: *https://covid.cdc.gov/covid-data-tracker/#covidnet-hospitalization-network.*

[25] Brown CM, Vostok J, Johnson H, et al. Outbreak of SARS–CoV–2 Infections, Including COVID–19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings—Barnstable County, Massachusetts, July 2021. MMWR Morb Mortal Wkly Rep. ePub: 30 July 2021; *https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm.*

[26] Delahoy MJ, Ujamaa D, Whitaker M, et al. Hospitalizations Associated with COVID–19 Among Children and Adolescents—COVID–NET, 14 States, March 1, 2020–August 14, 2021. MMWR Morb Mortal Wkly Rep 2021;70:1255–1260. DOI: *http://dx.doi.org/10.15585/mmwr.mm7036e2.*

[27] Singanayagam, AnikaBadhan, Anjna et al. Community transmission and viral load kinetics of the SARS–CoV–2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study. *https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(21)00648-4/fulltext.*

[28] Centers for Disease Control. ''COVID–19 Guidance for Operating Early Care and Education/Child Care Programs.'' November 10, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html.*

[29] Cohorting refers to placing children and child care providers into distinct groups who stay together throughout an entire day.

[30] Centers for Disease Control and Prevention. ''COVID–19 Guidance for Operating Early Care and Education/Child Care Programs.'' August 25, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html*; *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html.*

from severe illness and hospitalization if they contract the virus. Data from August 2021 indicate that when compared with vaccinated adults, those who were not fully vaccinated were 6 times more likely to become infected, 12 times more likely to be hospitalized, and 11 times more likely to die of COVID–19.[31] [32] In addition to preventing morbidity and mortality associated with COVID–19, currently available vaccines also demonstrate effectiveness against asymptomatic SARS–CoV–2 infection. A study of the period from December 14, 2020 to August 14, 2021, found that full vaccination for COVID–19 was 80 percent effective in preventing SARS–CoV–2 infection among health care workers.[33] While the scientific evidence for transmissibility of breakthrough cases (*i.e.,* cases in fully vaccinated individuals) is still developing, fully vaccinated individuals are less likely to spread COVID–19 because they are less likely to become infected in the first place. Studies have shown that vaccinations reduce the risk of COVID–19 among unvaccinated close contacts, including children. For example, one study found that vaccination of health care workers was associated with decreased COVID–19 cases among members of their household.[34] Additionally, a study during the early months of the COVID–19 vaccine rollout in Israel found that community vaccination rates were associated with declines in infections among unvaccinated children.[35] Vaccination was also shown to be effective in lowering the risk of severe disease if infected with the Delta variant, which has emerged as a more contagious strain of the SARS–CoV–2 with a higher impact on children than previous variants.[36]

Given that children under age 5 years are too young to be vaccinated at this time, requiring masking and vaccination among everyone who is eligible are the best defenses against COVID–19, especially cases arising from the more infectious Delta variant. These measures will also reduce program closures due to SARS–CoV–2 infection. When children or staff test positive for SARS–CoV–2 or have exposure to someone else who has tested positive for SARS–CoV–2, classrooms or entire programs close for a period of days or weeks to allow for test results and quarantining per local health department guidance. Additionally, as discussed later in this IFC, closures impose hardship on Head Start children and families by diminishing the ability to attend Head Start in person. The result is harm to early learning and development. Closures also diminish the ability of parents to work or participate in schooling.

Health and Safety

The Delta variant, which in the summer of 2021 became the predominant SARS–CoV–2 strain in the United States, is more contagious—spreading twice as fast—and results in more cases and hospitalizations for children.[37] The increase in hospitalization is more acute in states with lower vaccination rates. Studies released by CDC found that the rate of hospitalization for children was nearly four times higher in states with the lowest vaccination rates when compared to states with high vaccination rates.[38] Furthermore, hospitalization rates for children in September and October 2021, while lower than other age groups, were elevated relative to other periods during the pandemic.[39] Vaccination remains the best line of defense against COVID–19. Data show fully vaccinated persons are less likely than unvaccinated persons to become infected with SARS–CoV–2, and infections with the Delta variant in fully vaccinated persons are associated with less severe clinical outcomes.[40] Being fully vaccinated reduces risk of the transmission of SARS–COV–2 from staff to children who are not yet eligible for the vaccine and must be protected to minimize their exposure. Reducing transmission from staff to children and between staff also reduces transmission from children and staff to their family members. Transmission of SARS–CoV–2 in child care settings has been linked to infections and hospitalizations in family members,[41] and some children and staff may return home to family members who are older or have underlying medical conditions that put them at greater risk for COVID–19-related morbidity and mortality. Studies have shown that COVID–19 has disproportionately affected some racial and ethnic minority groups such as Hispanic or Latino, Black or African American, American Indian or Alaskan Native (AIAN), and Native Hawaiian and other Pacific Islander people.[42] It is also estimated that these disparities may have long term implications for these populations: for example, it is estimated that COVID–19 morbidity and mortality impacts can reverse over 10 years of progress in reducing the gaps in life expectancy between Black and White populations.[43] Many families of Head

[31] Monitoring Incidence of COVID–19 Cases, Hospitalizations, and Deaths, by Vaccination Status—13 U.S. Jurisdictions, April 4–July 17, 2021 Early Release/September 10, 2021/70.

[32] Center for Disease Control and Prevention. ''COVID Data Tracker.'' Available at: *https://covid.cdc.gov/covid-data-tracker/#covidnet-hospitalizations-vaccination.*

[33] Fowles, A., Gaglani, M., Groover, K., et al. Effectiveness of COVID–19 Vaccines in Preventing SARS–CoV–2 Infection among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance—Eight U.S. Locations, December 2020–August 2021, *Morbidity and Mortality Weekly Report,* August 27, 2021, Available at: *https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e4.htm?s_cid=mm7034e4_w.*

[34] Effect of Vaccination on Transmission of SARS–CoV–2. N Engl J Med 2021; 385:1718–1720 DOI: 10.1056/NEJMc2106757.

[35] Milman, O., Yelin, I., Aharony, N. et al. Community-level evidence for SARS–CoV–2 vaccine protection of unvaccinated individuals. Nat Med 27, 1367–1369 (2021). *https://doi.org/10.1038/s41591-021-01407-5.*

[36] Centers for Disease Control and Prevention. ''COVID Data Tracker. Pediatric Data.'' Available at: *https://covid.cdc.gov/covid-data-tracker/#pediatric-data*; Centers for Disease Control and Prevention. ''Delta Variant: What We Know About the Science.'' Available at: *https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html*; Centers for Disease Control and Prevention. Trends in COVID–19 Cases, Emergency Department Visits, and Hospital Admissions Among Children and Adolescents Aged 0–17 Years—United States, August 2020–August 2021. Available at: *https://www.cdc.gov/mmwr/volumes/70/wr/mm7036e1.htm?s_cid=mm7036e1_w.*

[37] Centers for Disease Control and Prevention. ''Delta Variant: What We Know About the Science.'' August 26, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html*; *https://covid.cdc.gov/covid-data-tracker/#pediatric-data.*

[38] Siegel DA, Reses HE, Cool AJ, et al. Trends in COVID–19 Cases, Emergency Department Visits, and Hospital Admissions Among Children and Adolescents Aged 0–17 Years—United States, August 2020–August 2021. MMWR Morb Mortal Wkly Rep 2021; 70:1249–1254. DOI: *https://www.cdc.gov/mmwr/volumes/70/wr/mm7036e1.htm.*

[39] Centers for Disease Control and Prevention. ''COVID Tracker Weekly Review.'' Available at: *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html.*

[40] Centers for Disease Control and Prevention. ''Science Brief: COVID–19 Vaccines and Vaccination.'' September 15, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html#:~:text=Evidence%20suggests%20the%20US%20COVID,interrupting%20chains%20of%20transmission.*

[41] Lopez AS, Hill M, Antezano J, et al. Transmission Dynamics of COVID–19 Outbreaks Associated with Child Care Facilities — Salt Lake City, Utah, April–July 2020. MMWR Morb Mortal Wkly Rep 2020;69:1319–1323. DOI: *http://dx.doi.org/10.15585/mmwr.mm6937e3.*

[42] Centers for Disease Control and Prevention. ''Introduction to COVID–19 Racial and Ethnic Health Disparities.'' December 10, 2020. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/index.html.*

[43] Andrasfay, T., & Goldman, N. (2021). Reductions in 2020 US life expectancy due to COVID–19 and the disproportionate impact on the Black and Latino populations. Proceedings of the

Continued

Start children and staff are members of minority communities; 71 percent of families, and 69 percent of staff, self-identify as Hispanic/Latino, Black/African American, American Indian, or Alaska Native,[44] who have been shown to be at increased risk of exposure to SARS–CoV–2. Given the disproportionate burden of COVID–19 deaths and lower vaccination rates among racial and ethnic minority groups, requiring vaccination among Head Start staff is not only an issue of personal health, but also promotes public and community health and health equity for children and staff in Head Start programs.[45]A recent CDC study showed that during the period from May 23 to June 12, 2021, 50 percent of the children in a classroom tested positive for SARS–COV–2 infection in a Marin County, California elementary school following exposure to one unvaccinated teacher.[46] This outbreak, which began with an unvaccinated teacher who attended school for two days with symptoms and took off her mask when reading to the class, demonstrates the importance of vaccinating staff members who work closely with young children. The rate of SARS–CoV–2 positivity in the two rows closest to the teacher's desk was 80 percent (8 of 10); in the three back rows, it was 29 percent (4 of 14). Four days after the teacher reported being symptomatic, when the teacher received a positive test, additional cases of COVID–19 were reported among other staff members, students, parents, and siblings connected to the school. In addition to highlighting the importance of vaccination and masking, this study points to the Delta variant's increased transmissibility and potential for rapid spread, especially in unvaccinated populations such as children too young for vaccination.[47]

Additionally, a study covering the period from July 15 to August 31, 2021, that included public K–12 schools in Maricopa and Pima Counties, Arizona, found that schools without mask requirements were 3.5 times more likely to have COVID–19 outbreaks compared with schools that started the year with mask requirements.[48] This finding is consistent with another study that included 520 counties across the United States during the period July 1 to September 4, 2021, reporting that counties without school mask requirements experienced larger increases in pediatric COVID–19 case rates after the start of school compared to counties that had school mask requirements.[49]

Prior to the availability of COVID–19 vaccines in the United States, during the period from September to October 2020, ACF collaborated with CDC to conduct a mixed-methods study in Head Start programs in eight states (Alaska, Georgia, Idaho, Maine, Missouri, Texas, Washington, and Wisconsin). The study found that implementing and monitoring adherence to recommended mitigation strategies, such as mask use, can reduce risk for SARS–COV–2 transmission in Head Start settings. It also showed that Head Start and Early Head Start programs that successfully implemented CDC-recommended guidance for childcare programs were able to continue offering safe in-person learning.[50]

A survey of the U.S. child care workforce conducted between May 26 and June 23, 2021, found that the overall COVID–19 vaccine uptake among child care providers was 78.2 percent, which was higher than the general U.S. adult population (65 percent).[51] The rate among Head Start and Early Head Start staff in center-based settings specifically was 73 percent, though lower in home-based programs. That 73 percent is a nationwide figure. It could be much less in certain areas. Also, it is 73 percent of adults, but none of the children in the programs can be vaccinated. While other teachers and staff members might be protected from an unvaccinated staff, the concern remains the protection of children and families. Depending on the role in the program of the 27 percent of Head Start staff that are unvaccinated, it could result in roughly 250,000 children who are in the care of an unvaccinated adult. This IFC is critical in order to increase that percentage, given the importance of protecting young children from exposure to SARS–CoV–2, including more transmissible variants.

Data show COVID–19 vaccination requirements are effective in increasing vaccination rates among employees. Other industries that have implemented vaccine requirements have seen substantial increases in the percent of their workforce receiving the vaccine.[52] [53] Two weeks following the Governor of Washington's vaccine requirement for State workers, according to the Washington State Department of Health, the weekly vaccination rate increased 34 percent.[54]

Reduced Program Closures

Requiring staff to get fully vaccinated for COVID–19 is critical to reduce program closures due to SARS–CoV–2 exposures. Such closures may impose multiple hardships on Head Start children and families. The children and families served by Head Start are largely comprised of individuals who experience economic hardship and have been historically underserved and marginalized. In 2019, 80 percent of children served by Head Start were

National Academy of Sciences of the United States of America, 118(5), e2014746118. *https://doi.org/10.1073/pnas.2014746118.*

[44] United States Department of Health and Human Services. ''Head Start Program Information Report.'' Available at: *https://eclkc.ohs.acf.hhs.gov/data-ongoing-monitoring/article/program-information-report-pir.*

[45] Patel KM, Malik AA, Lee A, et al. COVID–19 vaccine uptake among US child care providers. *Pediatrics.* 2021; doi: *https://pubmed.ncbi.nlm.nih.gov/34452977/.*

[46] Lam-Hine T, McCurdy SA, Santora L, et al. Outbreak Associated with SARS–CoV–2 B.1.617.2 (Delta) Variant in an Elementary School—Marin County, California, May–June 2021. MMWR Morb Mortal Wkly Rep 2021; 70:1214–1219. DOI: *http://dx.doi.org/10.15585/mmwr.mm7035e2.*

[47] Lam-Hine T, McCurdy SA, Santora L, et al. Outbreak Associated with SARS–CoV–2 B.1.617.2 (Delta) Variant in an Elementary School—Marin County, California, May–June 2021. MMWR Morb Mortal Wkly Rep 2021; 70:1214–1219. DOI: *http://dx.doi.org/10.15585/mmwr.mm7035e2.*

[48] Jehn M, McCullough JM, Dale AP, et al. Association Between K–12 School Mask Policies and School-Associated COVID–19 Outbreaks—Maricopa and Pima Counties, Arizona, July–August 2021. MMWR Morb Mortal Wkly Rep 2021;70:1372–1373. DOI: *http://dx.doi.org/10.15585/mmwr.mm7039e1.*

[49] Budzyn SE, Panaggio MJ, Parks SE, et al. Pediatric COVID–19 Cases in Counties With and Without School Mask Requirements—United States, July 1–September 4, 2021. MMWR Morb Mortal Wkly Rep 2021;70:1377–1378. DOI: *http://dx.doi.org/10.15585/mmwr.mm7039e3.*

[50] Coronado F, Blough S, Bergeron D, et al. Implementing Mitigation Strategies in Early Care and Education Settings for Prevention of SARS–CoV–2 Transmission—Eight States, September–October 2020. MMWR Morb Mortal Wkly Rep 2020; 69:1868–1872. DOI: *http://dx.doi.org/10.15585/mmwr.mm6949e3.*

[51] Patel KM, Malik AA, Lee A, et al. COVID–19 vaccine uptake among US child care providers. Pediatrics. 2021; doi: *https://www.cdc.gov/mmwr/volumes/70/wr/mm7036e1.htm.*

[52] Hirsch, L. (2021, September 30). *After mandate, 91% of Tyson workers are vaccinated.* The New York Times. Retrieved November 3, 2021, from *https://www.nytimes.com/2021/09/30/business/tyson-foods-vaccination-mandate-rate.html*; Josephs, L. (2021, September 29). Nearly 600 United Airlines employees face termination for failing to comply with Vaccine Mandate. CNBC. Retrieved November 3, 2021, from *https://www.cnbc.com/2021/09/28/unvaccinated-united-airlines-staff-faces-termination-as-early-as-today.html.*

[53] White House. ''WHITE HOUSE REPORT: Vaccination Requirements Are Helping Vaccinate More People, Protect Americans from COVID–19, and Strengthen the Economy.'' Available at: *https://www.whitehouse.gov/wp-content/uploads/2021/10/Vaccination-Requirements-Report.pdf.*

[54] White House. ''Path Out of the Pandemic.'' Available at: *https://www.whitehouse.gov/covidplan/#schools*; Mikkelsen, D. (2021, August 27). *Covid–19 vaccinations increase in Washington following mandates, Spike in cases. king5.com.* Retrieved November 3, 2021, from *https://www.king5.com/article/news/local/covid-19-vaccinations-increase-in-washington/281-1af4cc43-2d7f-4e77-a2fd-0fad28d0c4f3.*

Black, Indigenous, or persons of color.[55] Thirty-eight percent of children were dual language learners, with a language other than English spoken in the home (sometimes in addition to English). The mean annual household income for families was $26,000. Fifty-nine percent of children had a mother with a high school diploma or less, and the majority (77 percent) had a mother who was either working full-time, working part-time, or looking for work. Fifty-seven percent and 52 percent of children's families received SNAP benefits and WIC benefits, respectively. Thirty-one percent of children lived in a household where parents reported household food would often or sometimes run out and they did not have money to purchase more. Twenty-four percent of children's mothers had moderate or severe depressive symptoms, as measured by a clinical depression screening tool.

Head Start programs provide critical services to meet the health, nutrition, and early learning needs of these children and families. Programs provide healthy nutritious meals to children and provide diapers for babies and toddlers, every day they are at the program. Programs ensure children are brushing their teeth and provide critical mental health services. Programs also provide high-quality early education services to promote the overall learning and development of children and prepare them for entry into kindergarten. If a program must close its facilities for a designated period of time due to an outbreak of SARS–CoV–2 infections, children at-risk will not receive these critical in-person services. Further, program closures limit the ability of Head Start families to work or seek educational opportunities. As summarized previously, Head Start families earning low wages and very likely do not have sick leave to care for children while they are in quarantine. Staying home for intermittent closures, rather than working, imposes significant financial costs on Head Start families. It also places the families at risk of losing their employment if they must take unpaid leave to care for children in quarantine. Families rely on Head Start programs to provide stable and reliable early care and education services to their children, and the effects of intermittent closures are significant.

As alluded to previously, program closures also create instability and stress for children and families. They disrupt children's opportunities for learning, socialization, nutrition, and continuity and routine. In June 2020, the Defending the Early Years organization released a survey to better understand the impact COVID–19 has had on young children, their families, and their teachers. Balancing working from home and supporting children was the number one challenge for parents. This challenge was especially acute for families with multiple children in different grade levels or with one child under the age of four years. Fifty-five percent of parents of young children reported they were somewhat-to-very concerned about financial issues (*e.g.,* job loss) due to the COVID–19 pandemic.[56] Other issues of concern related to early childhood education program and school closures and/or virtual or remote learning have compounded to create uniquely difficult challenges for families. These compounding issues include missed opportunities for academic instruction, children falling behind, children missing out on social interaction and play with peers, challenges to safe reopening, and increase in children's stress.

Survey data from February 2021 indicates that a diminished ability to attend early childhood programs like Head Start in-person, is related to an increase in social and emotional difficulties for children, a decrease in support for children with disabilities, and an increase in parental stress due to lack of affordable child care including loss of jobs and wages.[57] The RAPID–EC Survey describes this as a ''chain of hardship'' where families loss of jobs results in difficulty paying for basic needs such as food and housing further negatively impacting family well-being including a rise in emotional distress for parents and children.[58] These disruptions can be particularly difficult for children and families experiencing homelessness, a population Head Start programs are required to prioritize (45 CFR 1302.15(c)). Of all families enrolled in Head Start programs, about 6.2 percent or 42,334 families experienced homelessness during the 2020–2021 program year.[59] Given the greater risks to the health and development of young children experiencing homelessness, stable Head Start services are critically important for these families.[60]

School closures, heightened stress, loss of income, and social isolation resulting from the COVID–19 pandemic are all stressors that have increased the risk for child abuse and neglect.[61] Head Start programs are required to prioritize foster children for enrollment, and there was an increase in the rate of children in foster care served in Head Start from 3.5 percent in 2019 to 3.8 percent in 2021. Program closures and remote learning during the pandemic contribute to disruption of service access for these children, who often experience trauma and are most in need of the consistent care, education and comprehensive services that Head Start provides.[62]

Supporting safe and sustained in-person services allows programs to return to fulfilling the critical functions they serve for children and families. All Head Start staff are mandated reporters and programs must have internal procedures in place for staff to report suspected cases of child abuse and neglect. Procedures also include notification to the program's Regional Office immediately if a staff member or volunteer suspects an incident. Agencies must provide training in methods for identifying and reporting suspected child abuse and neglect (45

[55] All descriptive statistics in this paragraph are from: Kopack Klein, A., Aikens, N., Li, A., Bernstein, S. Reid, N., Dang, M., Blesson, E. . . . Tarullo, L. (2021). Descriptive Data on Head Start Children and Families from FACES 2019: Fall 2019 Data Tables and Study Design, OPRE Report 2021–77, Washington, DC: U.S. Department of Health and Human Services.

[56] Jones, Denisha. Education Resources Information Center. ''The Impact of COVID–19 on Young Children, Families, and Teachers.'' *Defending the Early Years* (2020). Available at: *https://eric.ed.gov/?id=ED609168.*

[57] Barnett, W.S & Jung, K. Seven Impacts of the Pandemic on Young Children and their Parents: Initial Findings from NIEER's December 2020 Preschool Learning Activities Survey. February 2021. Available at: *NIEER_Seven_Impacts_of_the_Pandemic_on_Young_Children_and_their_Parents.pdf.*

[58] Fisher, P, Lombardi, J. & Kendall Taylor, N. A day in the life of a pandemic/ *https://medium.com/rapid-ec-project/a-year-in-the-life-of-a-pandemic-4c8324dda56b.*

[59] United States Department of Health and Human Services. ''Head Start Program Information Report.'' Available at: *https://eclkc.ohs.acf.hhs.gov/data-ongoing-monitoring/article/program-information-report-pir.*

[60] Kiersten: Coughlin, C.G., Sandel, M., & Stewart, A.M. (2020). Homelessness, Children, and COVID–19: A Looming Crisis. *Pediatrics,* 146(2). Available at: *https://doi.org/10.1542/peds.2020-1408;* Haskett, M.E., Armstrong, J.M., & Tisdale, J. (2016). Developmental Status and Social-Emotional Functioning of Young Children Experiencing Homelessness. Early Childhood Education Journal, 44(2), 119–125. Available at: *https://doi.org/10.1007/s10643-015-0691-8;* Weinreb; L., Goldberg, R., Bassuk, E., & Perloff, J. (1998). Determinants of Health and Service Use Patterns in Homeless and Low-income Housed Children. Pediatrics, 102(3), 554–562. Available at: *https://doi.org/10.1542/peds.102.3.554.*

[61] Rodriguez, C.M, Lee, S.J., Ward, K.P., & Pu, D.F. (2021). The Perfect Storm: Hidden risk of child maltreatment during the Covid–19 pandemic. Child Maltreatment, 26(2), 139–151.

[62] Kiersten: Klain, E.J., & White, A.R. (2013). Implementing trauma-informed practices in child welfare. CITY: State Policy Advocacy Reform Center. Retrieved from *http://www.centerforchildwelfare.org/kb/TraumaInformedCare/ImplementingTraumaInformedPracticesNov13.pdf.*

CFR 1304.52(l)(3)(i)).[63] Research also indicates that Early Head Start can serve as a child abuse and neglect prevention program.[64] The work Head Start programs do to strengthen family economic stability and decrease parental stressors is known to help prevent child abuse. Many programs also provide supports to families experiencing domestic violence (2.5 percent or 24,000 families in 2019 OHS data[65]). This IFC is an important step in decreasing serious risks to very young children and their families.

OHS has been tracking data on the operating status of programs since the onset of the pandemic. In March and April of 2020, more than 90 percent of programs closed all in-person operations for varying lengths of time. By August of 2020, 21 percent of programs had reopened for in-person services, 26 percent remained closed for in-person services due to COVID–19, and the remainder of programs were closed for summer months as regularly scheduled. In December 2020, data show the highest combined percentage (67 percent) of Head Start centers operating as solely virtual/remote or as hybrid, with an additional five percent, or 878, of centers closed. Together, these virtual/remote, hybrid, and closed centers account for over 13,500 centers nationwide. Each center represents many families for whom unpredictable closures and transitions to virtual learning come at a cost, may present difficult decisions between employment and child care responsibilities, and could result in major financial impacts on their household.

July 2021 data show that two percent of centers (393) were closed due to COVID–19, 14 percent of centers were operating in a virtual/remote service delivery model (2,861), and 45 percent of centers were operating in a hybrid service delivery model (9,181). Only 35 percent of centers (7,240) were operating fully in person.

September 2021 center operating status data shows 73 percent (14,917) of the centers are open for in-person only services, 14 percent (2,892) are operating in a hybrid model of in-person and virtual/remote services, and 4 percent (835) are open for virtual/remote only. Two percent (324) of centers remain entirely closed due to COVID–19 and the remaining 7 percent of centers are unreported, closed for the season, or closed due to a natural disaster. The increase in the number of programs delivering services in-person only is consistent with the expectations OHS outlined in May 2021 that programs move toward fully in-person services as soon as possible by January 2022, factoring in local health conditions.[66] This data also show that while closures declined, at least 20 percent of programs are closed, operating a virtual/remote service delivery model only, or in a hybrid model. Programs need to be able to resume fully in-person services to meet the needs of children and families, for all the reasons discussed in this section of the IFC.

A vaccination requirement and consistent and correct mask use are critical in mitigating SARS-CoV–2 transmission and keeping Head Start programs open. Program closures impede Head Start families from participating in the workforce, impose financial hardship on low wage workers who may not have paid time off to care for children who are in quarantine, create instability for children and families who depend on the Head Start program, and delay a full economic recovery for the nation.

HHS Secretary's Extension of Public Health Emergency

On January 31, 2020, Health and Human Services Secretary Alex M. Azar II determined that a public health emergency (PHE) exists retroactive to January 27, 2020,[67] under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID–19. This declaration has been extended every 90 days since then and most recently on October 18, 2021. The current PHE declaration extends until mid-January 2022.

C. Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553, ACF ordinarily publishes a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule before the provisions of the rule take effect. Specifically, 5 U.S.C. 553(b) generally requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Section 553(c) further requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment before the provisions of the rule take effect. Section 553(b)(B) authorizes the agency to waive these procedures, however, if the agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The 2021 outbreaks associated with the SARS-Cov-2 Delta variant have shown that current levels of COVID–19 vaccination coverage up until now have been inadequate to protect Head Start staff, children, and families. The data showing the effectiveness of vaccination indicate to us that we cannot delay taking this action in order to protect the health and safety of children and families, and the staff providing care.

We recognize that newly reported COVID–19 cases, hospitalizations, and deaths have begun to trend downward at a national level; nonetheless, they remain substantially elevated relative to numbers seen in May and June 2021, just before the Delta variant became the predominant strain circulating in the U.S.[68] And while cases are trending downward in some states, there are emerging indications of potential increases in others—particularly northern states where the weather has begun to turn colder.[69] The United States experienced a large COVID–19 wave in the winter of 2020. As of November 18, 2021, over 30 percent of people aged 12 years and older in the United States remain not fully vaccinated—and this situation could pose a threat to the country's progress on the COVID–19 pandemic, potentially incurring a fifth wave of COVID–19 cases.[70]

[63] Office of Head Start Information Memorandum. Mandated Reporting of Child Abuse and Neglect ACF–IM–HS–15–04. September 18, 2015. Available at: *https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-1504#:~:text=Staff%20who%20need%20help%20identifying,800%2D422%2D4453).&text=All%20Head%20Start%20programs%20must,of%20child%20abuse%20and%20neglect.*

[64] Child Trends. ''How Early Head Start Prevents Child Maltreatment.'' November 1, 2018. Available at: *https://www.childtrends.org/publications/how-early-head-start-prevents-child-maltreatment.*

[65] United States Department of Health and Human Services. ''Head Start Program Information Report.'' Available at: *https://eclkc.ohs.acf.hhs.gov/data-ongoing-monitoring/article/program-information-report-pir.*

[66] Office of Head Start. Office of Head Start (OHS) Expectations for Head Start Programs in Program Year (PY) 2021–2022. May 20, 2021. Available at: *https://eclkc.ohs.acf.hhs.gov/policy/pi/acf-pi-hs-21-04.*

[67] United States Department of Health and Human Services. ''Public Health Emergency.'' January 31, 2020. Available at: *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVDI-15Oct21.aspx.*

[68] *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[69] *https://www.cdc.gov/flu/professionals/acip/background-epidemiology.htm.*

[70] Centers for Disease Control. ''COVID Data Tracker.'' November 18, 2021. Available at: *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total.*

The efficacy of COVID–19 vaccinations has been demonstrated.[71] An ASPE report published on October 5, 2021, found that COVID–19 vaccines are a key component in controlling the COVID–19 pandemic. Clinical data show vaccines are highly effective in preventing COVID–19 cases and severe outcomes including hospitalization and death. Vaccines continue to be effective in preventing COVID–19 associated with the now-dominant Delta variant.[72] [73]

In addition to preventing morbidity and mortality associated with COVID–19, the vaccines also appear to be effective against asymptomatic SARS–CoV–2 infection. A recent study of health care workers in 8 states found that, from December 14, 2020, through August 14, 2021, full vaccination with COVID–19 vaccines was 80 percent effective in preventing RT–PCR–confirmed SARS–CoV–2 infection among frontline workers.[74] Emerging evidence also suggests that vaccinated people who become infected with Delta have the potential to be less infectious than infected unvaccinated people, thus decreasing transmission risk.[75] For example, in a study of breakthrough infections among health care workers in the Netherlands, SARS-CoV–2 infectious virus shedding was lower among vaccinated individuals with breakthrough infections than among unvaccinated individuals with primary infections.[76]

As noted earlier in this section, a combination of factors, including but not limited to failure to achieve sufficiently high levels of vaccination based on voluntary efforts and patchwork requirements, potential harm to children from unvaccinated staff, continuing strain on the health care system, and known efficacy and safety of available vaccines, have persuaded us that a vaccine requirement for Head Start staff, certain contractors, and volunteers is an essential component of the nation's COVID–19 response. Further, it would endanger the health and safety of staff, children and families, and be contrary to the public interest to delay imposing the vaccine mandate. Therefore, we believe it would be impracticable and contrary to the public interest for us to undertake normal notice and comment procedures and to thereby delay the effective date of this IFC. We find good cause to waive notice of proposed rulemaking under the APA, 5 U.S.C. 552(d), 553(b)(B). For those same reasons, as authorized by subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act or CRA), 5 U.S.C. 808(2), we find it is impracticable and contrary to the public interest not to waive the delay in effective date of this IFC under the CRA. Therefore, we find there is good cause to waive the CRA's delay in effective date pursuant to 5 U.S.C. 808(2).

IV. Background

Since its inception in 1965, Head Start has been a leader in supporting children from low-income families in reaching kindergarten healthy and ready to thrive in school and life. The program was founded on research showing that health and wellbeing are pre-requisites to maximum learning and improved short- and long-term outcomes. In fact, OHS identifies health as the foundation of school readiness.

The Head Start Program Performance Standards require children to be up to date on immunizations and their state's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) schedule (45 CFR 1302.42(b)(1)(i)). When children are behind on immunizations or other care, Head Start programs are required to ensure they get on a schedule to catch up. Additionally, education, family service, nutrition, and health staff help children learn healthy habits, monitor each child's growth and development, and help parents access needed health care. It is vitally important that enrolled pregnant women and children from birth to five years can access in-person services. When children are able to participate in their regular, in-person program options, they form a secure attachment to and relationship with their Head Start teachers. A large body of research demonstrates that a secure attachment with caregivers is a critical foundation for children to learn and explore their environment.[77] Furthermore, education staff who see children in person are better able to monitor their progress and individualize teaching and learning. The youngest children, children from birth to five years, need physical interaction with materials and in-person support for optimal learning. Screen based learning is much less effective and necessarily limited in the number of hours. Finally, as many parents return to work, they need the assurance that their children are in a safe and high-quality learning environment.

It is equally important that the Head Start program itself is safe for all children, families, and staff. For this reason, the Head Start Program Performance Standards specify that the program must ensure staff do not pose a significant risk of communicable disease (45 CFR 1302.93(a)). Ensuring that children and families can benefit from program services as safely as possible is OHS' highest priority. While this is always important, the COVID–19 pandemic highlights the need to ensure staff are as protected as possible so that children under age 5 years, who cannot yet be vaccinated, are also protected. Fully vaccinated staff are at much lower risk of infection and therefore, pose lower transmission risk to the young unvaccinated children in their care.[78] Young children who get the virus can also spread it to others in their homes and communities. Ensuring Head Start staff are fully vaccinated significantly reduces the possibility of the program playing an unwitting part in community spread of SARS-CoV–2.

On October 29, 2021 the U.S. Food and Drug Administration authorized the Pfizer-BioNTech mRNA vaccine for COVID–19 for use in children ages five to 11. On November 2, 2021, CDC adopted the CDC Advisory Committee on Immunization Practices' (ACIP) recommendation that children 5 to 11 years old be vaccinated for COVID–19 with the Pfizer-BioNTech pediatric vaccine. While Head Start does serve some children who are currently eligible for a vaccine, children five and older only represented 1.11 percent of children enrolled in Head Start programs during the 2020–2021 program year (Office of Head Start—Program Information Report [PIR] Enrollment Statistics Report—2021—National Level). As of November 11, 2021, there is no pediatric COVID–19 vaccine available for children younger than age five years in the United States.

To the extent a court may enjoin any part of the rule, the Department intends

[71] *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html.*

[72] *https://www.nejm.org/doi/full/10.1056/nejmoa2108891.*

[73] *https://www.mayoclinic.org/coronavirus-covid-19/covid-variant-vaccine.*

[74] *https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e4.htm?s_cid=mm7034e4_w.*

[75] *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html#ref43.*

[76] *https://www.medrxiv.org/content/10.1101/2021.08.20.21262158v1.full.pdf.*

[77] Bergin, C., & Bergin, D. (2009). Attachment in the classroom. *Educational Psychology Review, 21*(2), 141–170.; Rees, C. (2007). Childhood attachment. *British Journal of General Practice, 57*(544), 920–922.; Sierra, P. G. (2012). Attachment and preschool teacher: An opportunity to develop a secure base. *International Journal of Early Childhood Special Education (INT–JECSE), 4*(1), 1–16.

[78] Centers for Disease Control and Prevention. ''COVID–19 Guidance for Operating Early Care and Education/Child Care Programs.'' November 10, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html.*

that other provisions or parts of provisions should remain in effect. Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

V. Provisions of the Interim Final Rule

This interim final rule (IFR) adds new provisions to the Head Start Program Performance Standards to require: (1) Effective immediately, and with exceptions discussed below, universal masking for all individuals two years of age and older regardless of program option, (2) all Head Start staff, certain contractors, and volunteers in classrooms or working directly with children to be fully vaccinated for COVID–19, with exemptions discussed below, and (3) for those granted an exemption to the requirement specified in (2) at least weekly testing for current SARS–CoV–2 infection.

The definition of *staff* in § 1305.2 is ''paid adults who have responsibilities related to children and their families who are enrolled in programs.'' Consistent with that definition, ''all staff'' as noted in this IFC, refers to all staff who work with enrolled Head Start children and families in any capacity regardless of funding source. The term ''Head Start'' is inclusive of Head Start, Early Head Start, and Early Head Start-Child Care Partnerships.

Consistent with CDC's guidance, in general, fully vaccinated[79] means

(i) a person's status 2 weeks after completing primary vaccination with a COVID–19 vaccine with, if applicable, at least the minimum recommended interval between doses in accordance with the approval, authorization, or listing that is:

(A) Approved or authorized for emergency use by the Food and Drug Administration (FDA);

(B) Listed for emergency use by the World Health Organization (WHO); or

(C) Administered as part of a clinical trial at a U.S. site, if the recipient is documented to have primary vaccination with the ''active'' (not placebo) COVID–19 vaccine candidate, for which vaccine efficacy has been independently confirmed (*e.g.,* by a data and safety monitoring board) or if the clinical trial participant at U.S. sites had received a COVID–19 vaccine that is neither approved nor authorized for use by FDA but is listed for emergency use by WHO; or

(ii) A person's status 2 weeks after receiving the second dose of any combination of two doses of a COVID–19 vaccine that is approved or authorized by the FDA, or listed as a two-dose series by WHO (*i.e.,* a heterologous primary series of such vaccines, receiving doses of different COVID–19 vaccines as part of one primary series). The second dose of the series must not be received earlier than 17 days (21 days with a 4-day grace period) after the first dose.

A. Masking Requirement

This IFC adds a new provision to part1302, subpart D—Health Program Services in § 1302.47, Safety practices. Section 1302.47(b)(5), Safety practices, specifies the appropriate practices all staff and consultants follow to keep children safe during all activities. This IFC creates a new paragraph (vi) that requires universal masking for all individuals aged 2 years and older when there are two or more individuals in a vehicle owned, leased, or arranged by the Head Start program; indoors in a setting when Head Start services are provided; and for those not fully vaccinated, outdoors in crowded settings or during activities that involve sustained close contact with other people. The Office of Head Start notes that being outdoors with children inherently includes sustained close contact for the purposes of caring for and supervising children.

There are different types of masks. Head Start staff should choose a mask that is comfortable to wear and fits snugly. It must cover one's mouth, nose, and chin. It can fasten around the ears or the back of the head, as long as it stays in place when one talks and moves. Masks with vents or exhalation valves are not allowed because they allow unfiltered breath to escape the mask. For more information on masks, programs can consult Your Guide to Masks | CDC.

Purchasing masks needed for staff to fulfill their duties and responsibilities and for children is considered an allowable use of Head Start program funds, as well as the COVID–19 response funds and the American Rescue Plan funds.[80] Programs should have masks available to provide to children when they do not have their own mask.

This requirement is effective immediately upon publication of this IFC. Exceptions are noted for when individuals are eating or drinking; for children when they are napping; for the narrow subset of persons who cannot wear a mask, or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities Act (ADA), consistent with CDC guidance on disability exemptions;[81] and for children with special health care needs, for whom programs should work together with parents and follow the advice of the child's health care provider for the best type of face covering. It should be noted that like all new skills, children will need to be taught the proper way to put a mask on and keep a mask on. While children are adaptable, they are still in the early stages of development and may need reminders and reinforcements to comply with this new practice. It is imperative that Head Start staff abide by the Standards of Conduct outlined in 1302.90 Personnel Policies in the Head Start Program Performance Standards namely that staff, consultants, contractors, and volunteers implement positive strategies to support children's well-being and do not use harsh disciplinary practices that could endanger the health or safety of children.

B. Vaccination Requirement

This IFC adds four new provisions to part 1302, subpart I—Human Resources Management in § 1302.93, Staff health and wellness, and § 1302.94, Volunteers. Section 1302.93(a), Staff health and wellness, states that ''the program must ensure staff do not, because of communicable diseases, pose a significant risk to the health or safety of others in the program that cannot be eliminated or reduced by reasonable accommodation, in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.'' This IFC adds a new paragraph (a)(1) to § 1302.93 requiring all staff, and those contractors whose activities involve contact with or providing direct services to children and families, to be fully vaccinated for COVID–19, except for those (i) for whom a vaccine is medically contraindicated, (ii) for whom

[79] Centers for Disease Control and Prevention. ''When You've Been Fully Vaccinated.'' October 15, 2021. *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html.*

[80] Office of Head Start. ''FY 2021 American Rescue Plan Funding Increase for Head Start Programs.'' May 4, 2021. Available at: *https://eclkc.ohs.acf.hhs.gov/policy/pi/acf-pi-hs-21-03.*

[81] Centers for Disease Control. Order: Wearing of face masks while on conveyances and at transportation hubs. January 21, 2021. Available at: Order: Wearing of face masks while on conveyances and at transportation hubs | Quarantine | CDC.

medical necessity requires a delay in vaccination,[82] or (iii) who are legally entitled to an accommodation with regard to the COVID–19 vaccination requirement based on an applicable Federal law. It also adds a new paragraph (a)(2) indicating that those who are granted an exemption outlined in (a)(1)(i) through (iii) must undergo testing at least weekly for current SARS COV–2 infection.

The additions made to § 1302.94, Volunteers, mirrors that of § 1302.93, Staff health and wellness. This IFC also adds a new paragraph (a)(1) to § 1302.94, Volunteers, that requires all volunteers who are in classrooms or working directly with children other than their own must be fully vaccinated for COVID–19, except for those (i) for whom a vaccine is medically contraindicated, (ii) for whom medical necessity requires a delay in vaccination,[83] or (iii) who are legally entitled to an accommodation with regard to the COVID–19 vaccination requirement based on an applicable Federal law. It also adds a new paragraph (a)(2) indicating that those who are granted an exemption outlined in paragraphs (a)(1)(i) through (iii) must undergo testing at least weekly for current SARS-CoV–2 infection. The costs associated with regular testing for those granted an exemption are an allowable use of Head Start funds so long as it is included in a program's policies and procedures. While paying for the costs associated with regular testing is allowable use of Head Start funds, it is not a requirement. Programs should consider whether they can sustain continued funding for testing if/when the COVID–19 funds are exhausted. Finally, we have also revised § 1302.94 to remove the word ''regular'' from paragraph (a). We believe it is important for all volunteers to adhere to these requirements not just those who regularly volunteer in the program.

Programs may use SARS–CoV–2 testing for all staff, regardless of vaccination status, as an additional mitigation strategy with the COVID–19 vaccines, and those granted exemptions are required to undergo testing, but testing alone is not an alternative to the COVID–19 vaccination requirement specified in § 1302.93 and § 1302.94. This is a key difference between this IFC and the COVID–19 Vaccination and Testing; Emergency Temporary Standard, published, by the Occupational Safety and Health Administration (OSHA) on November 5, 2021, which requires employers with 100 or more employees to develop, implement, and enforce a mandatory COVID–19 vaccination policy, unless they adopt a policy requiring employees to choose to either be vaccinated or undergo regular SARS–Cov–2 testing and wear a face covering. Whereas OSHA allows employers to offer an option for testing and face coverings, this IFC does not permit a testing and face coverings option for individuals without an approved vaccine exemption. The rationale for the difference is that ACF is acting under statutory and regulatory standards that are different from OSHA's. In general, the Head Start Act requires standards for a safe environment for staff, children, and other participants.

Documentation of Vaccination Status

The Head Start Act at section 647 (42 U.S.C. 9842) has a provision on record-keeping, which allows the Secretary to require certain records be kept and to support OHS in conducting its oversight of programs through monitoring. Pursuant to the statutory recordkeeping requirement in section 647 of the Head Start Act (42 U.S.C. 9842) and in order to ensure programs are complying with the vaccination requirements of this IFC, we are requiring that they track and securely document the vaccination status of each staff member, including those for whom there is a temporary delay in vaccination, such as recent receipt of monoclonal antibodies or convalescent plasma. Vaccination exemption requests and outcomes must also be documented, discussed further in section II.A.5. of this IFC. This documentation will be an ongoing process as new staff are onboarded.

While program staff may not have personal medical records on file with their employer, all staff COVID–19 vaccines must be appropriately documented by the provider or supplier. All medical records, including vaccine documentation, must be kept confidential and stored separately from an employer's personnel files, pursuant to the ADA and the Rehabilitation Act.

Examples of acceptable forms of proof of vaccination include:

- CDC COVID–19 vaccination record card (or a legible photo of the card),
- Documentation of vaccination from a health care provider or electronic health record, or
- State immunization information system record.

If vaccinated outside of the United States, a reasonable equivalent of any of the previous examples would suffice.

Programs have the flexibility to use the appropriate tracking tools of their choice. For those who would like to use it, CDC provides a staff vaccination tracking tool that is available on the NHSN website (*https://www.cdc.gov/nhsn/hps/weekly-covid-vac/index.html*). This is a generic Excel-based tool available for free to anyone, not just NHSN participants, that facilities can use to track COVID–19 vaccinations for staff members.

Exemption Process

Under Federal law, including the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964, staff, contractors, and volunteers who cannot be vaccinated because of a disability under the ADA, medical condition, or sincerely held religious beliefs, practice, or observance may in some circumstances be granted an exemption, as discussed in II.B of this IFC. Head Start staff included in this IFC must be able to request an exemption from these COVID–19 vaccination requirements. Additionally, programs following CDC guidelines and the new requirements in this IFC may also be required to provide reasonable accommodations, to the extent required by federal law, for employees who request and receive exemption from vaccination because of a disability, medical condition, or sincerely held religious belief, practice, or observance.

In support of the new requirements in §§ 1302.93 and 1302.94, it is the responsibility of Head Start programs to establish a process for reviewing and reaching determinations regarding exemption requests (*e.g.,* disability, medical conditions, sincerely held religious beliefs, practices, or observances). Programs must have a process for collecting and evaluating such requests, including the tracking and secure documentation of information provided by those staff who have requested exemption, the program's decision on the request, and any accommodations that are provided. Requests for exemptions based on an applicable federal law must be documented and evaluated in accordance with applicable Federal law and each program's policies and procedures. As is relevant here, this IFC preempts the applicability of any state or local law providing for exemptions to the extent such law provides broader exemptions than provided for by federal law and are inconsistent with this IFC.

[82] As defined by CDC's informational document, Summary Document for Interim Clinical Considerations for Use of COVID–19 Vaccines Currently Authorized in the United States (CDC, September 29, 2021).

[83] As defined by CDC's informational document, Summary Document for Interim Clinical Considerations for Use of COVID–19 Vaccines Currently Authorized in the United States (CDC, September 29, 2021).

For staff members, contractors, and volunteers who request a medical exemption from vaccination, all documentation confirming recognized clinical contraindications to COVID–19 vaccines or medical need for delay, and which supports the request, must be signed and dated by a licensed practitioner, who is not the individual requesting the exemption, and who is acting within their respective scope of practice as defined by, and in accordance with, all applicable state and local laws. Such documentation must contain all information specifying which of the authorized or approved COVID–19 vaccines are clinically contraindicated for the staff member to receive and the recognized clinical reasons for the contraindications or the recognized clinical reasons necessitating delay in vaccination; and a statement by the authenticating practitioner recommending that the staff member be exempted from the program's COVID–19 vaccination requirements based on the recognized clinical contraindications or allowed to delay vaccination.

For more information, Head Start programs can refer to a resource produced by the Equal Employment Opportunity Commission (EEOC), which is responsible for enforcing federal laws that prohibit employment-related discrimination based on a person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information. The EEOC resource, What You Should Know About COVID–19 and the ADA, the Rehabilitation Act, and Other EEO Laws, available at What You Should Know About COVID–19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission (*eeoc.gov*), should be helpful in navigating employees' requests for accommodations (EEOC, October 25, 2021).

In granting such exemptions or accommodations, programs must ensure that they minimize the risk of transmission of SARS–CoV–2 to at-risk individuals, in keeping with their obligation to protect the health and safety of staff, children and families. To that end, it is a reasonable alternative that staff, contractors, and volunteers granted an accommodation be required to undergo testing at least weekly for current SARS–CoV–2 infection. Because unvaccinated employees are at higher risk of SARS–CoV–2 infection, and SARS–CoV–2 transmission among individuals without symptoms is a significant driver of COVID–19, ACF has determined it is necessary to prevent the pre-symptomatic and asymptomatic transmission of SARS–CoV–2 from unvaccinated staff, contractors and volunteers, through a requirement for a weekly screening test.[84] Although more regular screening testing (*e.g.,* twice weekly) may identify even more cases, ACF has decided to require a minimum testing of only on a weekly basis, which is in line with CDC recommendations.

In support of this requirement, programs should develop and implement a written SARS–CoV–2 testing protocol for those staff, contractors, and volunteers granted vaccine exemptions. Programs should consult with their Health Services Advisory Committee (HSAC) and local public health officials, along with recommendations from their agency's legal counsel and Human Resources department in the development of a SARS–CoV–2 testing protocol. Programs are encouraged to review guidance from CDC and FDA about selecting SARS–CoV–2 tests and developing related protocols. The costs of regular testing for those granted an exemption are an allowable use of Head Start funds so long as it is included in a program's policies and procedures. While using Head Start funds is allowable, it is not a requirement. It is at the program's discretion to decide if they will pay for the cost of testing, considering such factors as the number of approved exemptions, whether they can sustain continued funding for testing if/when the COVID–19 funds are exhausted, any incentives associated with allowing the use of funds for testing, and whether employees can cover the expenses of testing.

D. Implementation Dates

Due to the urgent nature of the vaccination requirements established in this IFC, we have not issued a proposed rule, as discussed in section C of this IFC. While some IFCs, or provisions within IFCs, are effective immediately upon publication, such as the mask requirement, we understand that instantaneous compliance, or compliance within days, with the vaccine requirement is not possible. Vaccination requires time, especially vaccines delivered in a series. Programs' updates to their policies and procedures also take time to develop. However, in order to provide protection to staff, children, and families, we believe it is necessary to begin staff vaccinations as quickly as reasonably possible. Therefore, we have set the January 31, 2022 as the compliance date for staff to be vaccinated. Although an individual is not considered fully vaccinated until 14 days (2 weeks) after the final dose, staff, certain contractors and volunteers who have received the final dose of a primary vaccination series by January 31, 2022 are considered to have met the vaccination requirement, even if they have not yet completed the 14-day waiting period. This timing flexibility applies only to the initial implementation of this IFC and has no bearing on ongoing compliance.

The rationale for a different timeline for compliance with the vaccine requirement in this rule relative to the CMS or the OSHA rule is because this timeline in this rule is coordinated with OHS's expectation, communicated through guidance in May 2021, for programs' return to full in-person services. Beginning January 2022, Head Start programs are expected to resume fully in-person services after a period of increased flexibility with virtual and remote services during the pandemic. At this time, OHS will reinstate pre-pandemic practices for tracking and monitoring enrollment as part of the Full Enrollment Initiative. This means that during the first week of February, OHS will evaluate reported enrollment on the last day of January for purposes of the under-enrollment process. Requiring that staff receive their second dose in a two-dose vaccine series, or a single dose in a one-dose vaccine series, by January 31 is consistent with this return to fully in-person services.

VI. Regulatory Process Matters

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment, *see* Public Law 105–277, because the action it takes in this interim final rule will not have any impact on the autonomy or integrity of the family as an institution. However, ACF invites public comment on whether the actions set forth in this interim final rule would have a negative effect on family well-being.

[84] OSHA. ''COVID–19 Vaccination and Testing; Emergency Temporary Standard.'' November 5, 2021. Available at: *https://www.federalregister.gov/documents/2021/11/05/2021-23643/covid-19-vaccination-and-testing-emergency-temporary-standard.*

Federalism Assessment Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would preempt some State laws that prohibit employers from requiring their employees to be vaccinated for COVID–19. Consistent with the Executive Order, we find that State and local laws that forbid employers in the State or locality from imposing vaccine requirements on employees directly conflict with this exercise of our statutory authority to protect the health and safety of Head Start participants and their families and ensure the continuation of services by requiring vaccinations for staff, certain contractors, and volunteers and universal masking. As is relevant here, this IFC preempts the applicability of any State or local law providing for exemptions to the extent such law provides broader grounds for exemptions than provided for by Federal law and are inconsistent with this IFC. In these cases, consistent with the Supremacy Clause of the Constitution, the agency intends that this rule preempts State and local laws to the extent the State and local laws conflict with this rule. The agency has considered other alternatives (for example, relying entirely on measures such as voluntary vaccination, source control alone, and physical distancing) and has concluded that the mandate established by this rule is the minimum regulatory action necessary to achieve the objectives of the statute. Given the transmission rates of the existing strains of coronavirus and their disproportionate impacts on low-income communities served by Head Start programs, we believe that vaccination of almost all staff, certain contractors, and volunteers is necessary to promote and protect program participants and ensure program continuity. The agency has examined case studies from other employers and concludes that vaccine mandates are vastly more effective than other measures at achieving ideal vaccination rates and the resulting protections. Given the emergency situation with respect to the Delta variant detailed more fully above, time did not permit usual consultation procedures. We are, however, inviting comments on the substance as well as legal issues presented by this rule.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA) allows Congress to review ''major'' rules issued by federal agencies before the rules take effect, *see* 5 U.S.C. 801(a). The CRA defines a major rule as one that has resulted, 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, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets, see 5 U.S.C. 804(2). The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this action is a major rule because it will have an annual effect on the economy of $100 million or more.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.,* minimizes government-imposed burden on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The PRA requires that agencies obtain OMB approval, which includes issuing an OMB number and expiration date, before requesting most types of information from the public. Regulations at 5 CFR part 1320 implemented the provisions of the PRA and § 1320.3 of this part defines a ''collection of information,'' ''information,'' and ''burden.'' PRA defines ''information'' as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). ''Burden'' means the total time, effort, or financial resources expended by persons to collect, maintain, or disclose information.

This IFC establishes new recordkeeping requirements under the PRA. Head Start grant recipients are required as part of this IFC to maintain records on staff vaccination rates. Additionally, Head Start programs are required to develop their own written SARS–CoV–2 testing protocol for current infection for individuals granted vaccine exemptions. To promote flexibility for local programs, there is no standardized instrument associated with the new recordkeeping requirement. As required under the PRA, ACF will submit a request for approval of these recordkeeping requirements. We will initially request approval through an emergency clearance process, allowing for 6 months of approval under the PRA. We will follow the initial approval with a full request, including two public comment periods, to extend approval of the recordkeeping requirement. A separate notice inviting comments on these new recordkeeping requirements will be published in the **Federal Register**.

In addition to these new recordkeeping requirements, Head Start grant recipients are expected to update their program policies and procedures to ensure costs associated with regular testing for those granted an exemption are an allowable use of Head Start funds. The recordkeeping activity of maintaining program policies and procedures including the associated burden with updating them on an annual basis is already approved under an existing OMB information collection (Control Number 0970–0148). The separate **Federal Register** notice will also invite comments on this existing recordkeeping requirement.

VII. Economic Analysis of Impacts

Introduction

We have examined the impacts of this interim final rule under Executive Order 12866, Executive Order 13563, and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe, and OIRA determined, that this interim final rule is an economically significant regulatory action as defined by Executive Order 12866. Thus, this rule has been reviewed by the Office of Information and Regulatory Affairs.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the impacts to small entities

attributable to the interim final rule are limited in nature, we certify that the interim final rule will not have a significant economic impact on a substantial number of small entities. These impacts are discussed in detail in the Final Small Entity Analysis.

Summary of Costs and Benefits

This interim final rule establishes vaccine, record keeping, and mask requirements to mitigate the spread of SARS–CoV–2 in Head Start programs. We have evaluated the likely impacts of the interim final rule in comparison to a baseline scenario of no new regulation that incorporates projections of COVID–19 vaccine coverage, cases, deaths, and hospital admissions. We anticipate that the requirement that all Head Start staff get fully vaccinated for COVID–19 will induce a substantial portion of unvaccinated staff to get fully vaccinated. We also estimate that the regulation will induce a similar number, but smaller share, of unvaccinated Head Start volunteers to get fully vaccinated in response to the interim final rule. Some Head Start volunteers are likely also covered by other regulatory actions, which complicates attributing changes in vaccine coverage to any particular regulatory action. We discuss this in greater detail in the Baseline Section and Benefits Section.

The increase in vaccine coverage attributable to the interim final rule will result in substantial health benefits from reductions in COVID–19 mortality and morbidity. We monetize these impacts using a Value per Statistical Life (VSL) for fatal cases, and estimates of the Value per Statistical Case (VSC) that vary by case severity for non-fatal cases. We also predict that reductions in COVID–19 cases among Head Start staff will result in lower absenteeism, including fewer missed days of work for staff infected with SARS–CoV–2 or recovering from COVID–19 and unvaccinated staff quarantining after a close contact tested positive for SARS–CoV–2. We monetize these impacts using a value of time that accounts for time savings for parents and other caregivers for children enrolled at Head Start centers. We estimate a range of total monetized benefits between $200 million and $296 million under a 7% discount rate, and a range between $196 million and $288 million under a 3% discount rate. These monetized benefits cover a time period between the publication date of the interim final rule and March 1, 2022, when our underlying COVID–19 projections end. For our main analysis, we assume that the requirements will be effective for this time horizon, but also consider a scenario in which the requirements are lifted at an earlier date, such as by the COVID–19 Public Health Emergency expiring. The choice of discount rate impacts the benefit estimates through the VSC, which is based on estimates of the Value per Quality-Adjusted Life Year that vary by discount rate.

In addition to the impacts that we monetize in this analysis, we anticipate that the increase in vaccine coverage attributable to the interim final rule will result in indirect health benefits from reduced transmission of SARS–COV–2, the virus that causes COVID–19. These impacts include reductions in secondary infections from Head Start staff and volunteers to other staff and volunteers, children, and families. We anticipate that the masking requirement will also reduce transmission SARS–COV–2 from individuals covered by the requirement. This impact includes a reduction in transmission from children to Head Start teachers, staff, and other children. We also discuss a mechanism and valuation approach for monetizing benefits from Head Start centers reopening. We discuss these impacts in greater detail in the Benefits Section, and note that they are embedded in a quantitative approach in the Net Benefits section.

We have identified several costs that are attributable to the interim final rule. We monetize the costs of vaccination, which incorporates a value of time for staff and volunteers, and the cost of doses and administration; the costs of the masking requirement; the costs of testing unvaccinated staff and volunteers; and the costs of recordkeeping associated with the interim final rule. We also consider a scenario where a share of unvaccinated Head Start staff quit rather than get fully vaccinated. Under this scenario, these costs would include training replacement staff, and the costs to parents and other caregivers for children enrolled at Head Start center resulting from staff vacancies. We estimate a range of costs between $16 million and $83 million, which cover a time period between the publication of the interim final rule and March 1, 2022, which is consistent with the time horizon adopted for our benefits estimates. These cost estimates do not vary with the discount rate. We also discuss potential additional costs of masking and testing associated with Head Start centers reopening as a result of the interim final rule.

Table 1 presents a summary of the monetized impacts attributable to the interim final rule. All dollar estimates are presented in millions of 2020 dollars. We request comments on these benefit and cost estimates.

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Table 1. Summary of Benefits, Costs and Distributional Effects of Interim final rule

Category		Primary Estimate	Low Estimate	High Estimate	Units			Notes
					Year Dollars	Discount Rate	Period Covered	
Benefits	Annualized Monetized $millions/year	$247,964,991	$200,294,622	$295,635,335	2020	7%	3 months	
		$242,185,591	$195,986,161	$288,384,996	2020	3%	3 months	
	Annualized Quantified					7%		
						3%		
	Qualitative							
Costs	Annualized Monetized $millions/year	$49,456,037	$15,612,352	$83,299,721	2020	7%	3 months	
		$49,456,037	$15,612,352	$83,299,721	2020	3%	3 months	
	Annualized Quantified					7%		
						3%		
	Qualitative							
Transfers	Federal Annualized Monetized $millions/year					7%		
						3%		
	From/To	From:			To:			
	Other Annualized Monetized $millions/year					7%		
						3%		
	From/To	From:			To:			
Effects	State, Local or Tribal Government: Small Business: Wages: Growth:							

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We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. [insert reference number]). We request comments on this analysis.

VIII. Alternatives Considered

In making the decision to require vaccination and mask use, ACF considered whether to require other mitigation strategies or combinations of mitigation strategies. The CDC's recently issued guidance on November 10, 2021 reiterates the importance of using multiple prevention strategies in ECE programs.[85] In addition to vaccinations and masks, other strategies noted in this IFC include staying home if sick; handwashing; improving ventilation; screening and diagnostic testing; cleaning and disinfecting; keeping physical distance; and cohorting.

There are two primary reasons that ACF decided to mandate vaccination and mask use. First, Head Start programs have a broad set of program performance standards that already include requirements for infection control, exclusion policies, cleaning, sanitizing and disinfecting. The requirement for staying home when sick is part of § 1302.47(b)(4)(i)(A); hand hygiene (handwashing) is included at § 1302.47(b)(6)(i); cleaning, sanitizing, and disinfecting is at § 1302.47(b)(2)(i); and physical distancing is part of § 1302.47(b)(4)(i)(A), which OHS sees as a strategy for a program's infection control practices). In addition, § 1302.47(b)(1)(iii) states that facilities need to be ''free from pollutants, hazards and toxins that are accessible to children and could endanger children's safety,'' though it is difficult be overly prescriptive about ventilation given the range of facilities and spaces used by center-based and family child care programs.

Second, as discussed in this IFC, being fully vaccinated for COVID–19 and using a mask are two of the most effective mitigation strategies available to reduce transmission of COVID–19.[86] With this in mind, ACF determined a federal requirement is necessary. While some agencies and localities have implemented vaccine and masking requirements, many have not. Additionally, vaccine uptake among Head Start staff has not been as robust as hoped for and has been insufficient to protect the health and safety of children and families receiving Head Start services. Combined, these factors leave certain children and families with fewer mitigation strategies in place to protect them than others. It is ACF's responsibility to make sure the environment is as safe as possible for Head Start programs uniformly across all 1,600 grant recipients.

Additionally, although less effective and efficient than vaccination, the CDC has recognized regularly testing unvaccinated individuals for SARS–CoV–2 as a useful tool for identifying asymptomatic and/or pre-symptomatic infected individuals so that they can be isolated,[87] which informed the decision to include in this IFC a testing policy for those granted an exemption. It is also consistent with the CDC's guidance on November 11, 2021, which added screening testing information to its prevention strategies. This guidance notes that in ECE programs, screening testing can help promptly identify and isolate cases, quarantine those who may have been exposed to SARS–CoV–2 and are not fully vaccinated, and identify clusters to reduce the risk to in-person education. The inclusion of a requirement for masking, vaccination and testing, for those staff, contractors and volunteers granted an exemption, ensures the Head Start Program Performance Standards reflect the current science with respect to reducing the spread of SARS–CoV–2 and reducing COVID–19.

ACF also deliberated on the question of whether to require Head Start programs to cover the cost of testing for those granted an exemption or to shift those costs to staff. Head Start staff are not high wage earners, and we recognize it could create hardship for staff granted an exemption to absorb the cost of weekly testing. That said, if programs have many staff who are approved for exemptions, it could be difficult for the program to bear the cost of weekly testing, particularly when their COVID–19 response funds are exhausted. Given these various factors, ACF determined that it is important to make it allowable to use funds at this time, including both COVID–19 response funds and ongoing program funds, for the purpose of testing but allow programs the discretion to make the decision based on budgetary factors, the number of staff approved for an exemption, incentives or other factors. We invite comment on this decision.

ACF also considered whether to tie the universal masking requirement and the testing requirement to SARS–CoV–2 transmission rates. For example, the requirement could make masking voluntary once community transmission drops below a certain level, consistent with CDC guidance. There are more than 1600 Head Start grant recipients, many of which serve multiple communities, cross state lines or serve an entire state. Transmission rates could be significantly different across service areas. For example, one grant recipient in Michigan covers 21 different counties. It would be burdensome for this program to issue separate guidance across its service area to account for changing transmission levels across those counties. Another grant recipient, Alabama Department of Resources, has a partnership that covers the entire state of Alabama. Again, it would be burdensome for this grant recipient to change its mask guidance for different centers through the state as transmission rates change. ACF values CDC guidance that localities should monitor community transmission in making decisions and has relied on the importance of local health conditions in issuing guidance to Head Start programs. However, in the case of mask use, ACF is prioritizing a clear and transparent policy that is easy for grantees to follow across their service areas. Additionally, children benefit from routine and predictability. ACF determined that the best course of action was not to provide an end date on the universal masking and testing requirement. ACF invites comment on this decision to leave an undetermined end date or whether we should set a finite end date, such as 6 months from the effective date of the rule.

[85] Centers for Disease Control and Prevention. ''COVID–19 Guidance for Operating Early Care and Education/Child Care Programs.'' November 10, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html.*

[86] Centers for Disease Control and Prevention. ''Science Brief: COVID–19 Vaccines and Vaccination.'' September 15, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html#:~:text=Evidence%20suggests%20the%20US%20COVID,interrupting%20chains%20of%20transmission.*

[87] Centers for Disease Control and Prevention. ''Overview of Testing for SARS–CoV–2 (COVID–19). October 22, 2021. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html.*

Appendix to Section VII of Supplementary Information: Economic Analysis of Impacts

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Vaccine and Mask Requirements To Mitigate the Spread of COVID–19 in Head Start Programs

Final Regulatory Impact Analysis; Final Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis; Office of Head Start, Administration for Children and Families, Department of Health and Human Services

Prepared by

Office of Science and Data Policy

Office of the Assistant Secretary for Planning and Evaluation

Office of the Secretary

Department of Health and Human Services

I. Introduction and Summary

A. Introduction

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	Annualized Quantified					7%		
						3%		
	Qualitative							
Transfers	Federal Annualized Monetized $millions/year					7%		
						3%		
	From/To	From:			To:			
	Other Annualized Monetized $millions/year					7%		
						3%		
	From/To	From:			To:			
Effects	State, Local or Tribal Government: Small Business: Wages: Growth:							

II. Economic Analysis of Impacts

A. Background

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten healthy and ready to thrive in school and life. The program was founded on research showing that health and wellbeing are pre-requisites to maximum learning and improved short- and long-term outcomes. In fact, the Office of Head Start identifies health as the foundation of school readiness.

The Head Start Program Performance Standards require children to be up to date on immunizations and their state's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) schedule. When children are behind on immunizations or other care, Head Start programs are required to ensure they get on a schedule to catch up. Additionally, education, family service, nutrition, and health staff help children learn healthy habits, monitor each child's growth and development, and help parents access needed health care. It is vitally important that enrolled pregnant women and children from birth to 5 can access in person services, especially after so many children spent a year or more away from in-person Head Start services.

It is equally important that the Head Start program itself is safe for all children, families, and staff. For this reason, the Head Start Program Performance Standards specify that the program must ensure staff do not pose a significant risk of communicable disease that cannot be eliminated or reduced by reasonable accommodation, in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act. Ensuring that children and families can benefit from program services as safely as possible is the Office of Head Start's highest priority.

COVID–19 has resulted in substantial reductions in in-person Head Start services available to children and their families. As described in greater detail in the Baseline Section, a majority of Head Start centers have moved from fully in-person services to a virtual/remote or a hybrid operating status, while other centers remain closed as a result of a COVID–19 case or outbreak in a program. Without the vaccination and masking requirements of this regulatory action, there is a higher likelihood of transmission of SARS–COV–2 at in-person Head Start settings, which would result in more people at greater risk for COVID–19-related morbidity and mortality, including children returning home and exposing family members. This interim final rule is needed to address the health risks from COVID–19 and to increase the likelihood that Head Start centers are able to reopen or return to in-person services safely.

C. Purpose of the Rule

This regulatory action requires COVID–19 vaccination among all staff employed in Head Start programs, as well as for volunteers that interact with children. The interim final rule also requires mask wearing for all adults and children aged 2 years and older in certain in-person Head Start settings. This regulation also requires recordkeeping of vaccination status for both volunteers and staff. This regulation is necessary to ensure healthy, safe conditions for in-person early care and education services to children and their families enrolled in Head Start programs nationwide. Being fully vaccinated against COVID–19, combined with wearing a mask, are the safest and most effective ways for Head Start programs to mitigate the spread of COVID–19 among the children and families they serve, as well as among staff and volunteers. This action will help more early childhood centers safely remain open and provide needed services to Head Start children and families.

D. Baseline Conditions

This section describes the baseline scenario of no new regulatory action from which the incremental changes to these outcomes from the policy options considered are measured. The scope of this economic analysis is limited to the impacts that are attributable to this regulatory action, which covers more than 20,000 Head Start Centers. The requirements of this interim final rule will cover about 273,000 staff, and a share of the 1 million Head Start volunteers who interact with children in certain in-person Head Start settings. It will also impact a share

of the 864,000 children in certain in-person Head Start settings.

On September 9, 2021, President Biden announced the ''Path Out of the Pandemic'' COVID–19 Action Plan,[88] which announced the development of a Head Start vaccination requirement, and other elements of a national strategy to combat COVID–19. In our primary analysis, we exclude impacts attributable to other elements of this comprehensive national strategy. For example, the COVID–19 Action Plan announced the development of the Emergency Temporary Standard (ETS) recently issued by the Department of Labor's Occupational Safety and Health Administration (OSHA). Among other provisions, the OSHA ETS requires employers with 100 or more employees to develop, implement, and enforce a mandatory COVID–19 vaccination policy, unless they adopt a policy requiring employees to choose to either be vaccinated or undergo regular COVID–19 testing and wear a face covering. Centers for Medicare & Medicaid Services (CMS) also recently issued an interim final rule with comment period that requires COVID–19 vaccinations for workers in most health care settings that receive Medicare or Medicaid reimbursement.[89] The OSHA action covers over 80 million workers, while the CMS action will apply to approximately 76,000 providers and cover more than 17 million health care workers across the country. Additionally, through Executive Orders 14042, ''Ensuring Adequate COVID Safety Protocols for Federal Contractors'' [90] and 14043, ''Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,'' [91] and other actions, all federal executive branch employees, including the military, and all federal contractors will be required to be fully vaccinated. In total, the vaccination requirements associated with the Action Plan apply to about 100 million Americans.

These actions (if implemented, despite ongoing litigation) would likely have significant impacts on the measured outcomes described in this baseline scenario. For example, a recent White House report [92] discusses existing vaccination requirements and summarizes several potential impacts of widespread adoption of such requirements, such as those envisioned in the Action Plan:

''[V]accination requirements have repeatedly been shown to increase vaccination rates among workers by 20 to 25 percentage points, and in some cases by significantly more. More than three out of four (75.5%) working-aged adult Americans are currently in the labor force, so increasing the share of workers who are fully vaccinated by 20 to 25 percentage points could vaccinate an additional 30 to 38 million working-age Americans, cutting the total share of unvaccinated Americans roughly in half. This could have a major effect on case rates, hospitalization rates, and death rates—preventing future waves of the virus from having as significant an effect as occurred during the spread of the Delta variant. At an individual level, unvaccinated people are more than five times as likely to get a symptomatic case of COVID–19 and more than 10 times as likely to be hospitalized or to die from COVID–19.''

There are challenges in extrapolating from private-sector or smaller jurisdiction mandates to broader action by the federal government, especially in regards to the effectiveness of the mandates; however, the estimates contained in the White House Report are broadly consistent with DOL's estimate ''that approximately 75.3 million (89.4 percent) of covered employees will be vaccinated when the ETS is in full effect.'' [93] We exclude these potential spill-over impacts in characterizing our baseline, adopting a regulatory scenario that does not account for other elements of the COVID–19 Action Plan.

The scope of the COVID–19 vaccine requirement is limited to staff at Head Start programs and volunteers that interact with children at Head Start programs. To characterize the baseline scenario, we present forecasts that are specific to the 273,000 staff employed or contracted by Head Start programs,[94] and discuss volunteers separately. We provide quantitative projections of COVID–19 vaccine coverage, and for each of the COVID–19 outcomes described above. Our forecasts are based on COVID–19 Projections maintained by the Institute for Health Metrics and Evaluation (IHME).[95] IHME summarizes its projections in a Data Release Information Sheet:

''IHME has developed projections for total and daily deaths, daily infections and testing, hospital resource use, and social distancing due to COVID–19 for a number of countries. Forecasts at the subnational level are included for select countries. The projections for total deaths, daily deaths, and daily infections and testing each include a reference scenario: Current projection, which assumes social distancing mandates are re-imposed for 6 weeks whenever daily deaths reach 8 per million (0.8 per 100k). They also include two additional scenarios: Mandates easing, which reflects continued easing of social distancing mandates, and mandates are not re-imposed; and Universal Masks, which reflects 95% mask usage in public in every location. Hospital resource use forecasts are based on the Current projection scenario. Social distancing forecasts are based on the Mandates easing scenario. These projections are produced with a model that incorporates data on observed COVID–19 deaths, hospitalizations, and cases, information about social distancing and other protective measures, mobility, and other factors. They include uncertainty intervals and are being updated daily with new data. These forecasts were developed in order to provide hospitals, policy makers, and the public with crucial information about how expected need aligns with existing resources, so that cities and countries can best prepare.''

We adopt the IHME reference scenario as the source of our baseline forecasts. Since the IHME estimates are ''produced with a model that incorporates data on observed COVID–19 deaths, hospitalizations, and cases, information about social distancing and other protective measures, mobility, and other factors,'' this significantly narrows the wide range of analytic choices that would otherwise be necessary to characterize the baseline scenario. Since the IHME projections cover the entire United States population, we adjust these projections to align with data specific to Head Start. We discuss the specific adjustments in the following narrative.

Vaccine Coverage

A recent study measured ''COVID–19 Vaccine Uptake Among U.S. Child Care Providers,'' with 21,663 respondents, including 1,456 individuals providing services through Head Start or Early Head Start. Among Head Start survey respondents, 73.0% reported receiving a COVID–19 vaccine. We interpret this to mean that respondents had received at least one dose. This interpretation is consistent with the study's comparison to the general adult population. The authors note that ''[t]he survey was active between May 26, 2021 and June 23, 2021,'' and compare the overall findings to vaccine uptake for the U.S. general adult population of 65%.[96] Since Head Start staff are more likely to be vaccinated than the general adult population, our baseline forecast will reflect this difference. Specifically, we extend this point-in-time estimate to the vaccine coverage forecasts by adopting an assumption that Head Start staff are about 12% more likely to be vaccinated than the general adult population,[97] and that this relationship will persist under the time horizon of the baseline scenario of this analysis. As a sample calculation, if the general adult population vaccine coverage rate increases to 67.1%, we would infer a corresponding increase in the Head Start vaccine coverage rate to 74.6%.[98]

The Center for Disease Control and Prevention (CDC) maintains a COVID Data

[88] *https://www.whitehouse.gov/covidplan/.*

[89] *https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination.*

[90] *https://www.federalregister.gov/documents/2021/09/14/2021-19924/ensuring-adequate-covid-safety-protocols-for-federal-contractors.*

[91] *https://www.federalregister.gov/documents/2021/09/14/2021-19927/requiring-coronavirus-disease-2019-vaccination-for-federal-employees.*

[92] *https://www.whitehouse.gov/wp-content/uploads/2021/10/Vaccination-Requirements-Report.pdf.*

[93] *https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-23643.pdf.*

[94] *https://eclkc.ohs.acf.hhs.gov/about-us/article/head-start-program-facts-fiscal-year-2019.*

[95] Institute for Health Metrics and Evaluation (IHME). COVID–19 Mortality, Infection, Testing, Hospital Resource Use, and Social Distancing Projections. Seattle, United States of America: Institute for Health Metrics and Evaluation (IHME), University of Washington, 2020. *http://www.healthdata.org/covid/data-downloads.* Accessed on November 10, 2022.

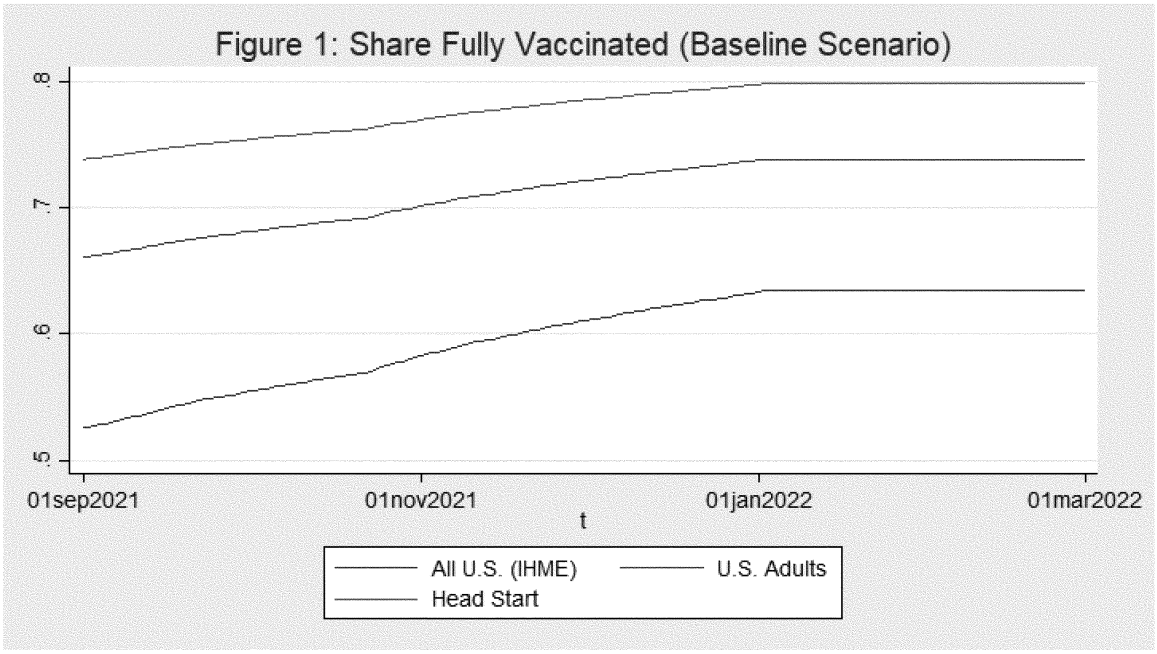
[96] Patel KM, Malik AA, Lee A, et al. (2021). ''COVID–19 vaccine uptake among US child care providers.'' *Pediatrics;* doi: 10.1542/peds.2021–053813.

[97] $0.73/0.65 \approx 1.12$. We perform calculations in the model based on the share of individuals who are unvaccinated. The comparable calculation is $1-[(1-0.73)/(1-0.65)] \approx 0.23$, which indicates that Head Start staff are about 23% less likely to be unvaccinated than the general adult population.

[98] $1-[(1-0.671) * (1-0.23)] \approx 0.75$.

Tracker on its website, which includes a summary of COVID–19 vaccinations in the United States. On November 10, 2021, CDC reports that 58.5% of the total U.S. population are fully vaccinated, and reports 70.3% for a subset of the population that are 18 years of age or older (hereafter, ''adults'').[99] The IHME COVID–19 projections are reported at a population level, and do not contain separate projections that are limited to the adult population. Therefore, generating a baseline forecast of vaccine coverage among Head Start staff from the IHME projections first requires an intermediate step of estimating vaccine coverage for the adult population. We follow the same approach for this adjustment as we discussed to translate adult vaccine coverage estimates to Head Start staff vaccine coverage estimates. Specifically, we calculate a point-in-time relationship using November 10, 2021 CDC data, and assume that this relationship will persist over the time horizon of the analysis. We assume that adults are about 20.1% more likely to be vaccinated than the total population.[100] Combining the adjustments, a population vaccine coverage rate on November 10, 2021 for the total U.S. population of 58.5% would correspond to a 77.1% Head Start vaccine coverage rate.[101]

We assume that vaccination coverage will continue to increase over time and incorporate this into our baseline. For example, the IHME projections indicate U.S. vaccine coverage of 60.0% on November 18, 2021. This estimate increases to 63.4% on March 1, 2022, the last date covered in the most recent IHME projections available at the time of the analysis. We assume that vaccine coverage for Head Start will follow a similar trajectory, after accounting for the adjustments described above, and incorporate this into our baseline. Figure 1 presents forecasts of vaccine uptake under the baseline scenario. These forecasts include the unadjusted IHME projections for the total population, our adjustments to project adult vaccination coverage, and adult vaccination coverage specific to Head Start staff. For Head Start, we anticipate the vaccine coverage rate will increase from 77.9% on November 18, 2021 to 79.8% on March 1, 2022 under the baseline scenario of no further regulatory action.



COVID–19 Cases, Deaths, and Hospitalizations Among U.S. Adults

The IHME projections include estimates for infections, new hospital admissions, and deaths at a population level. Several adjustments are necessary to convert these population-level estimates to estimates appropriate for the Head Start staff population characteristics. Specifically, we adjust for the age distribution and vaccine coverage rates of Head Start staff. We discuss these adjustments in the narrative contained in the next two sections.

We generate projections of daily cases by multiplying IHME's projections of daily infections with its daily estimates of the infection detection ratio.[102] Over the period covering November 19, 2021 to March 1, 2022, the estimated infection detection ratio varies between 0.4693 and 0.4993, suggesting that, on any particular day, measured COVID–19 cases likely represent between 47% and 49% of the total COVID–19 infections. We assume that this measure is consistent with the CDC's case definition.[103] We acknowledge the importance of these additional infections that are not confirmed cases but focus on the metric of confirmed COVID–19 cases, which is more comparable with other sources of data used in this analysis.

We make several initial adjustments of the IHME projections, which cover the entire U.S. population, to generate forecasts that are limited to the adult population. Using CDC COVID–19 line-level case surveillance data that cover July 1–September 30, 2021, we estimate that 21% of COVID–19 cases were individuals aged <18 years.[104] We adjust the total population case projections by this percentage to capture only adult cases. We follow the same procedure for mortality: CDC case surveillance data indicate that 0.1% of COVID–19 deaths were individuals aged <18 years. We adjust the total population death projections by this percentage to capture only adult deaths.[105] We follow the same procedure for hospitalizations: CDC COVID–NET data on laboratory-confirmed COVID–19 associated hospitalizations indicate that 1.9% of COVID–19 hospitalizations were

[99] *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total.*

[100] 0.703/0.585 ≈ 1.20. Calculated in the model as 1 − [(1 − 0.703)/(1 − 0.585)] ≈ 0.284, with the interpretation is adults are about 28.4% less likely to be unvaccinated than the total population.

[101] 1 − [(1 − .585) * (1 − 0.284) * (1 − 0.23)] ≈ 0.771.

[102] *http://www.healthdata.org/special-analysis/covid-19-estimating-historical-infections-time-series.*

[103] *https://ndc.services.cdc.gov/case-definitions/coronavirus-disease-2019-2021/.*

[104] Calculation based on CDC COVID–19 Line level case surveillance data, HHS Protect. 1,414,206/6,589,127 ≈ 0.21. This share is somewhat higher in recent months than in earlier periods. For all documented COVID–19 cases through September 30, 2021, the share is 14% (4,461,790/31,537,748 ≈ 0.14). Accessed October 8, 2021.

[105] Calculation based on data extracted from *https://covid.cdc.gov/covid-data-tracker/#demographics.* 637/567,704 ≈ 0.001. Accessed October 3, 2021.

individuals aged <18 years.[106] We adjust the total population hospital admission projections by this percentage to capture only adult hospital admissions. We note that the hospitalization data provide more limited coverage than data on cases and deaths. This adjustment assumes that the distribution of hospitalizations by age nationally are similar to the underlying data. We believe this assumption is more justified, in the context of this analysis, than not performing an adjustment.

Figure 2 presents the IHME projections of daily infections, cases, and our estimates of adult cases. Figure 3 presents the IHME projection of daily excess deaths and reported deaths. This analysis focuses on the projections of reported deaths, which are more comparable with other data sources used in this analysis. Figure 4 presents the IHME projections of daily new hospital admissions and adjusted estimates for adult cases.

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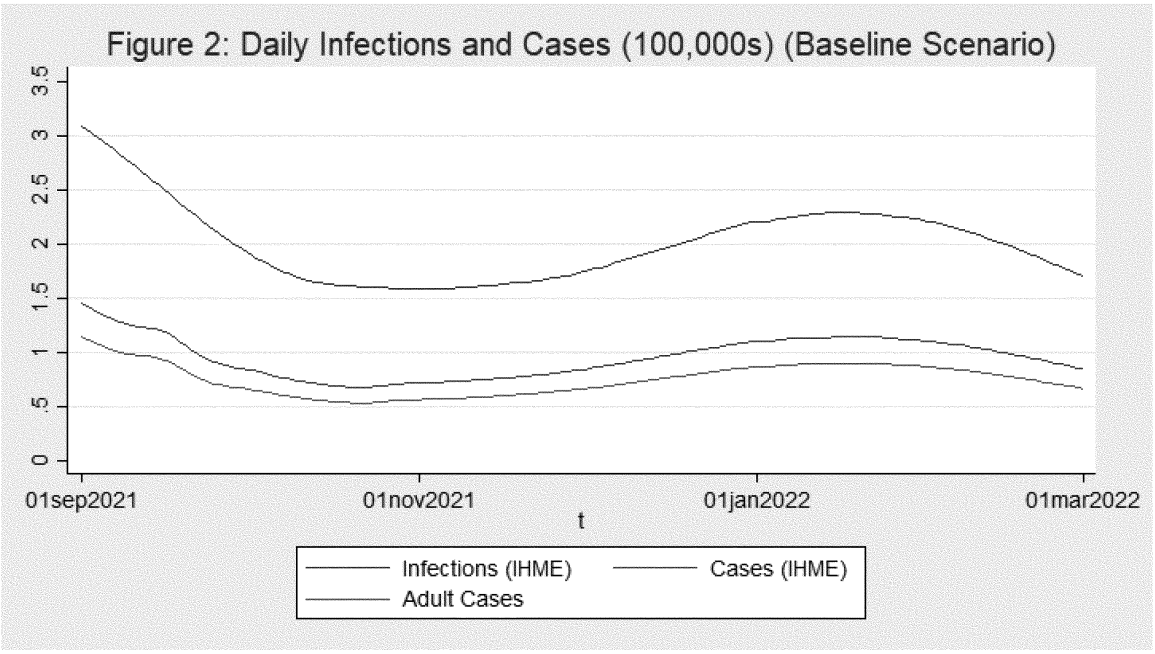
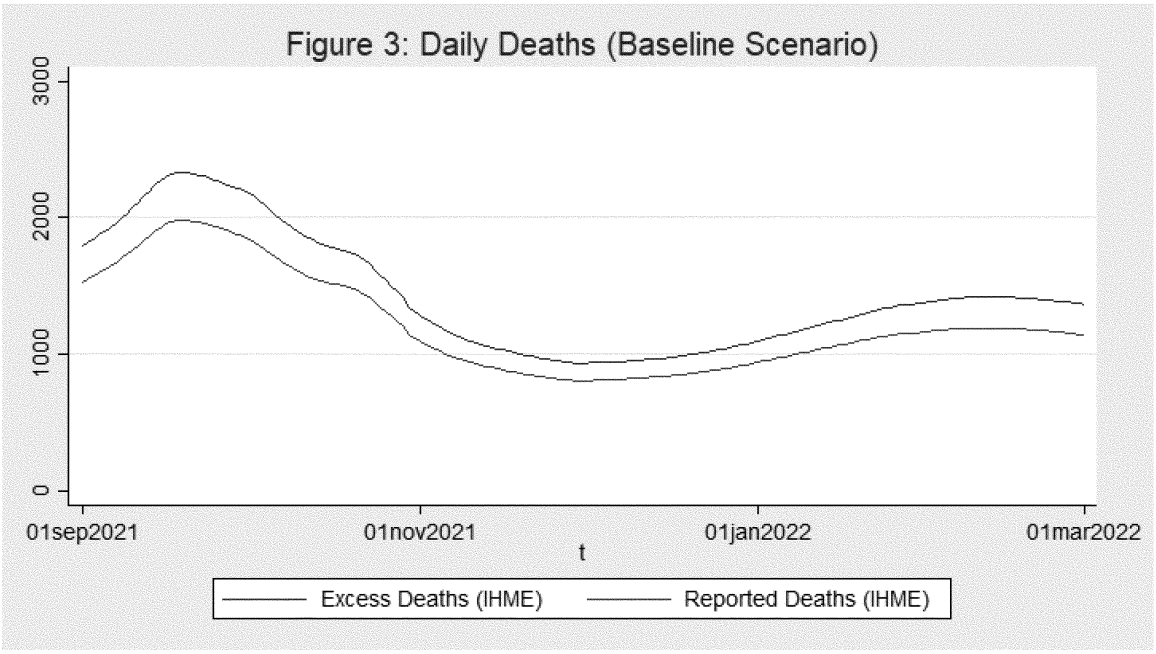
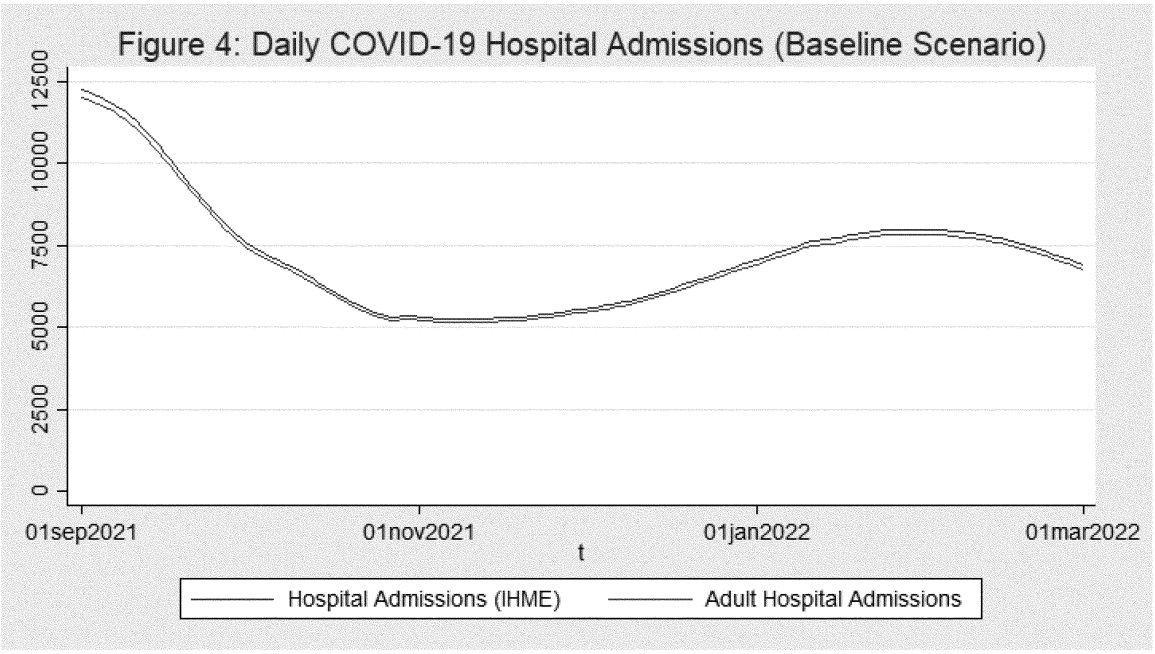




[106] Calculation based on COVID–19-Associated Hospitalization Surveillance Network, Centers for Disease Control and Prevention. *https://gis.cdc.gov/grasp/covidnet/COVID19_5.html.* 4,228/220,539 ≈ 0.019. Accessed on October 3, 2021.



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COVID–19 Cases, Deaths, and Hospital Admissions Among Head Start Staff

Head Start staff differ from the general U.S. adult population level in several ways. First, the size of the population is much smaller. Using the IHME total population estimate of about 328 million, and a Census estimate of the population share of adults of about 78%,[107] we compute a total of 255 million adults. The 273,000 Head Start staff represent about 0.1% of total adults. As an initial adjustment, we adjust the baseline scenario estimates of daily cases, deaths, and hospital admissions downward to reflect the population under the scope of the interim final rule.

If Head Start staff had a COVID–19 risk profile that matched the adult population, no further adjustments would be necessary; however, as described above, a higher share of Head Start staff are fully vaccinated than the adult population as a whole, and we expect this trend to continue through the time horizon of the baseline scenario of this analysis. To properly account for the risk reductions to Head Start staff attributable to higher vaccination rates, we perform an adjustment based on published estimates of the incidence rate ratios (IRRs) that compare outcomes for unvaccinated and vaccinated persons at a population level, which provide a measure of vaccine effectiveness.[108]

This CDC study reports averaged weekly, age-standardized IRRs for cases, hospitalizations, and deaths, among persons who were not fully vaccinated (simplified later by describing these as ''unvaccinated'') compared with those among fully vaccinated persons. The IRRs suggest that vaccinated individuals experienced a significantly reduced risk of infection, hospitalization, and death, including during a period when Delta became the most common variant. For the June 20–July 17, 2021 period, the point estimates of the average weekly IRRs for all ages were 4.6 for cases, 10.4 for hospitalizations, and 11.3 for deaths. For individuals between ages 18 and 49 years, these estimates are 4.5 for cases, 15.2 for hospitalizations, and 17.2 for deaths. For individuals between ages 50 and 64 years, these estimates are 4.9 for cases, 10.9 for hospitalizations, and 17.9 for deaths. For individuals aged ≥65 years, these estimates are 4.6 for cases, 7.6 for hospitalizations, and 9.6 for deaths.

The IRR of 4.6 for cases means that vaccination offers strong protection against COVID–19 and that fully vaccinated people had about a five-fold reduction in risk of infection compared with people not fully vaccinated. These IRR estimates cover adults and are standardized to match the U.S. adult population. They are calculated by dividing average weekly incidence on a per capita basis among unvaccinated individuals by the incidence among fully vaccinated individuals. For example, the study calculates the IRR for cases by dividing 89.1 cases per 100,000 unvaccinated individuals by 19.4 cases per 100,000 vaccinated individuals.[109]

For comparison, the CDC study underlying these estimates also reports higher measurements of the IRR during an earlier time period, covering April 4–June 19, 2021. Specifically, the comparable IRR estimates were 11.1 for cases, 13.3 for hospitalizations, and 16.6 for deaths. The study does not disentangle the changes in the IRR measurements across these time periods that are attributable to the highly transmissible Delta variant or other factors, such as the potential decline in vaccine effectiveness as the time since vaccination increases. Although the IRRs are unlikely to remain constant over time, the estimates corresponding to the June 20–July 17, 2021 period represent the best available estimates of the IRR for the time horizon of this analysis.

We also generate IRR estimates specific to the Head Start teacher population. These estimates reflect differences in the age distribution of Head Start teachers rather than observational data on COVID–19 cases, since ACF does not collect this information. To generate these estimates, we pair the age-specific IRR estimates with the corresponding age range for Head Start teachers. ACF data indicates that 10.4% of Head Start teachers are ages 18–29 years; ages 30–39 years, 29.6%; ages 40–49 years, 26.7%; ages 50–59 years, 21.7%; and ages >60 years, 11.6%.[110] For the purposes of this analysis, we assume that half of Head Start teachers 60 years and older are ages 60–64 years, and half are ages >65 years. Table 2 presents the central estimates of the age-standardized IRRs for cases, hospitalizations and deaths for the adult population, as reported in the CDC study, and IRRs for the same outcomes, but standardized for the age profile of Head Start teachers. We later apply these estimates, which reflect the Head Start teacher age

[107] *https://www.census.gov/popclock/data_tables.php?component=pyramid.*

[108] Scobie HM, Johnson AG, Suthar AB, et al. (2021). ''Monitoring Incidence of COVID–19 Cases, Hospitalizations, and Deaths, by Vaccination Status—13 U.S. Jurisdictions, April 4–July 17, 2021.'' Morbidity and Mortality Weekly Report 2021;70:12841290. DOI: *http://dx.doi.org/10.15585/mmwr.mm7037e1.*

[109] 89.1/19.4 ≈ 4.6.

[110] Doran, Elizabeth, Natalie Reid, Sara Bernstein, Tutrang Nguyen, Myley Dang, Ann Li, Ashley Kopack Klein, Sharika Rakibullah, Myah Scott, Judy Cannon, Jeff Harrington, Addison Larson, Louisa Tarullo, and Lizabeth Malone (2021). A Portrait of Head Start Classrooms and Programs in Spring 2020: FACES 2019 Descriptive Data Tables and Study Design, OPRE Report #2021–215, Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. Pending Publication.

profile, for a broader population of Head Start staff.

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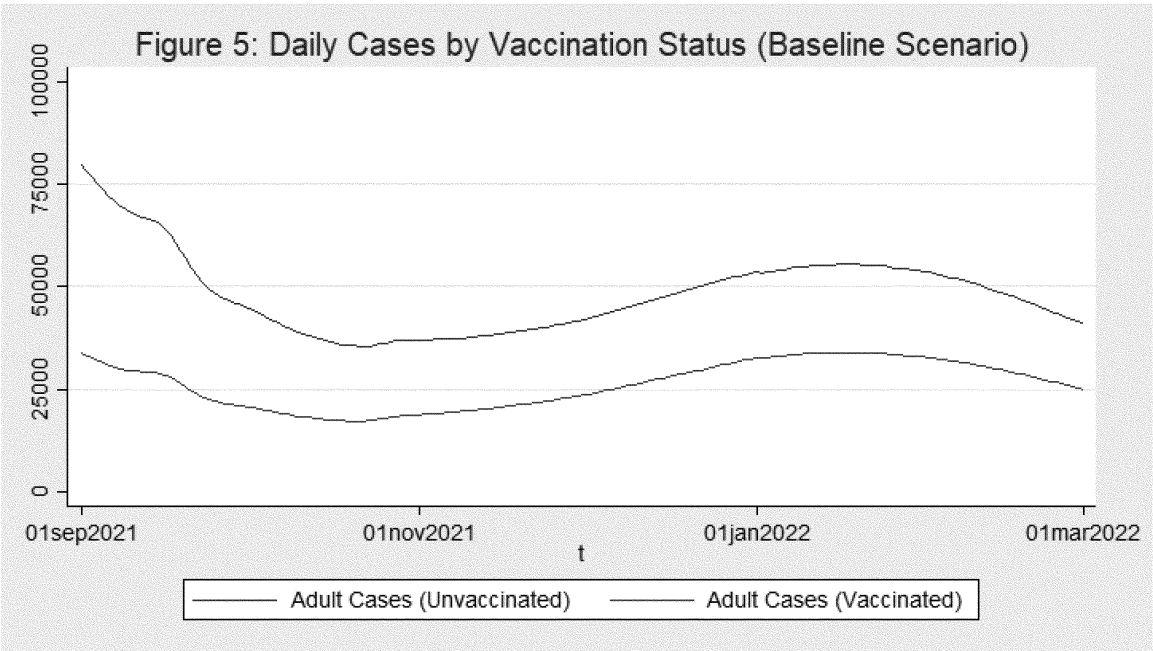
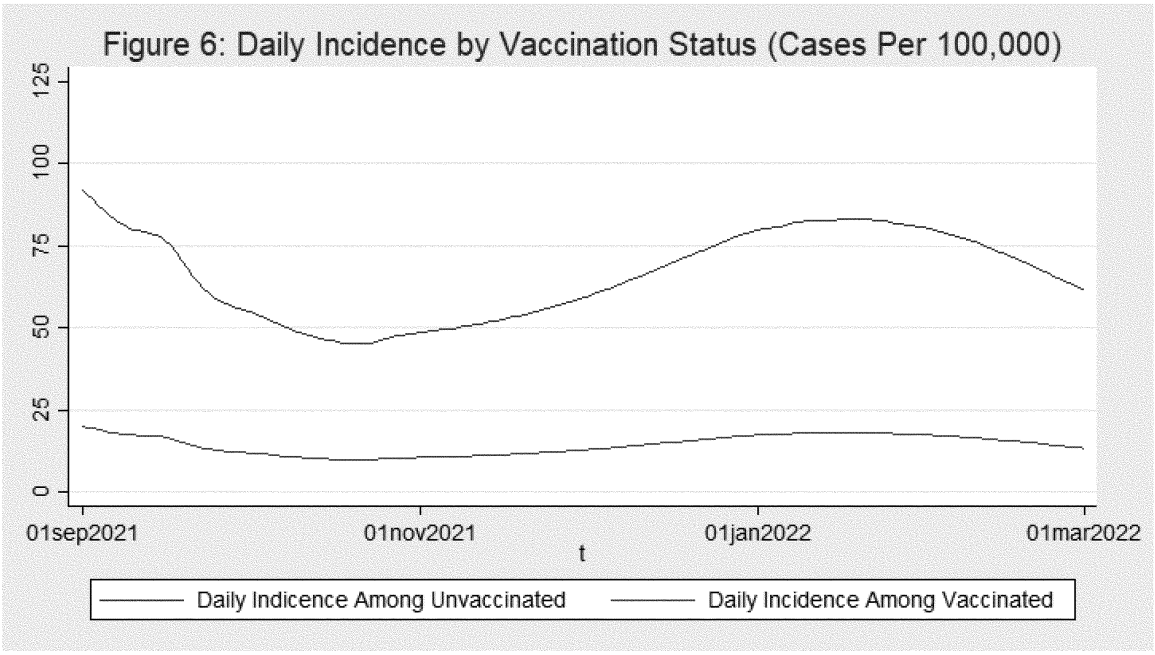
Table 2. Incidence Rate Ratios for Adults and Head Start Teachers

Age Range (years)	Share of Teachers	Case IRR	Hospitalization IRR	Death IRR
18-29	10.4%	4.5	15.2	17.2
30-39	29.6%	4.5	15.2	17.2
40-49	26.7%	4.5	15.2	17.2
50-59	21.7%	4.9	10.9	17.9
60-64	5.8%	4.9	10.9	17.9
65+	5.8%	4.6	7.6	9.6
Adults		4.6	10.4	11.3
Head Start		4.6	13.6	17.0

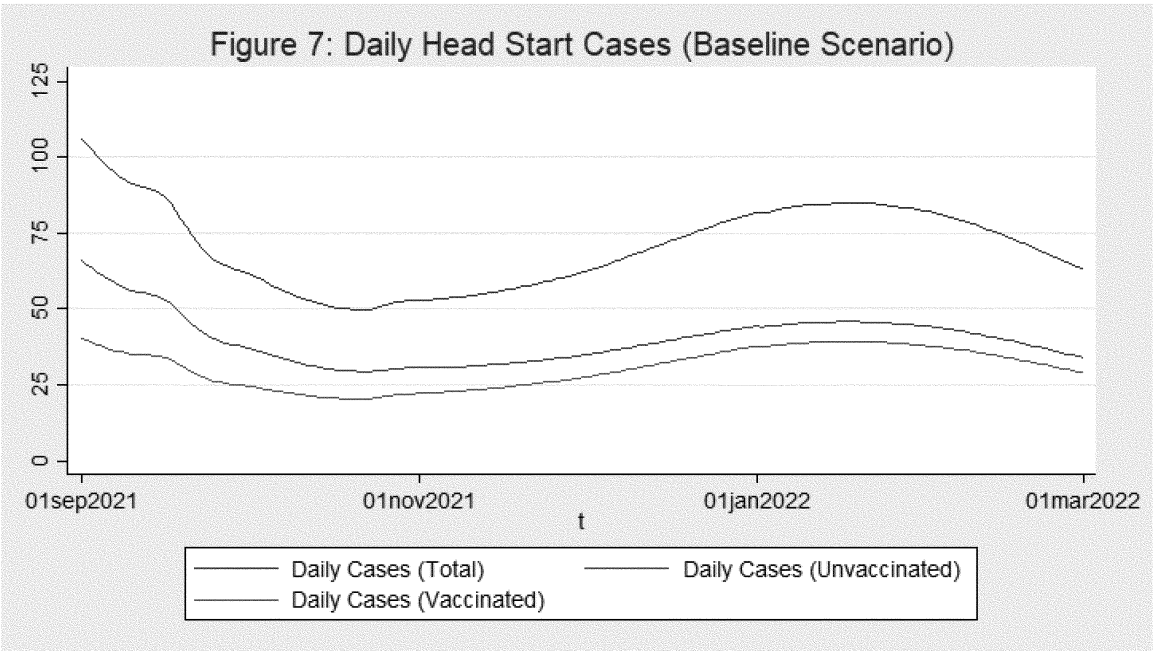
By adopting the adult age-standardized IRR estimates, we are able to disaggregate COVID–19 cases among unvaccinated individuals from cases among vaccinated individuals. Figure 5 presents these estimates for the adult population.



We combine estimates of the daily adult cases among unvaccinated individuals and daily estimates of the unvaccinated adult population to generate daily incidence rates among unvaccinated individuals on a per capita basis. We perform similar calculations to generate daily incidence rates among vaccinated individuals on a per capita basis. Figure 6 reports the daily incidence over time and by vaccination status. These estimates are reported as cases per 100,000 individuals. For the last week in our projections, covering February 23, 2022 to March 1, 2022, the weekly incidence rate for unvaccinated adults is about 446 cases per 100,000, while the weekly incidence rate for vaccinated adults is about 97 cases per 100,000, which is consistent with a 4.6 IRR. This time period corresponds to an adult vaccination rate of 73.8%, for a total adult weekly incidence rate of about 188 cases per 100,000, and a total weekly adult case count of 480,523.



To generate estimates of cases among Head Start staff, we combine the estimates of vaccine uptake from Figure 1, estimates of the daily incidence by vaccination status, applying the IRR measure specific to Head Start staff, with outcomes scaled by the number of Head Start staff. This approach assumes, for the purpose of developing quantitative projections, that daily exposure to COVID–19 among Head Start staff is largely driven by interactions with the public as a whole and that Head Start staff face similar exposure to these risks as other adults. If Head Start staff face greater exposure to these risks than the adult population, such as through routine contact with children who are generally not eligible for a COVID–19 vaccination, this will cause our baseline estimates of cases, hospitalizations, and deaths among Head Start staff to be downward biased. This would similarly result in our estimates of the health benefits from increases in vaccine coverage to be downward biased. We project that Head Start staff will experience lower per-capita case counts than the general adult population due to higher rates of vaccination, and a higher IRR rate consistent with the age profile of Head Start staff compared to all adults. Figure 7 presents daily Head Start cases. For the last week in our projections, covering February 23, 2022 to March 1, 2022, we estimate about 457 total cases, with 246 cases from unvaccinated, and 211 cases from vaccinated Head Start staff. These cases translate to a baseline Head Start weekly incidence rate of about 167 cases per 100,000.



We generate estimates of the Head Start deaths and hospital admissions using the same approach as we describe for cases. We adopt IRR estimates specific to the Head Start staff population of 17.0 for deaths and an IRR of 13.6 for hospitalizations. These IRRs indicate that the COVID–19 vaccines provide even stronger protection against COVID–19 associated hospitalization and death than against infections. We perform adjustments to the adult incidence rates that are intended to control for deaths and hospital admissions that are concentrated in older age groups than we observe among Head Start staff.

Using CDC surveillance data through October 3, 2021, we observe that, among the 567,704 COVID–19 deaths in the United States for which age data are available, 319,311 deaths are among individuals ≥75 years. While the Head Start workforce includes a number of older individuals, very few are ≥75 years. Head Start data indicate that 11.6% of teachers are age 60 years or older, compared to the general population share of 22.7%. We anticipate that almost all of the Head Start teachers age 60 years or older are between age 60 and 74 years, and assume this is also true for the broader Head Start staff population. Therefore, we adjust the adult death incidence rate to exclude deaths among individuals ≥75 years. This adjustment reduces the baseline forecast for Head Start deaths downwards by about 56%.[111] Older individuals are also hospitalized at higher rates than younger peers, but this difference is less pronounced than for deaths. Among laboratory-confirmed COVID–19-associated hospitalizations for which age data are available, about 43% are individuals ≥65 years,[112] an age subgroup representing about 16.5% of the total population. Since only 5.8% of Head Start staff are individuals ≥65 years, we reduce the total population baseline forecasts for hospitalizations by about two thirds [113] of 43%, or about 28%,[114] since we expect a significant share of these hospitalizations to be among individuals older than most Head Start staff.

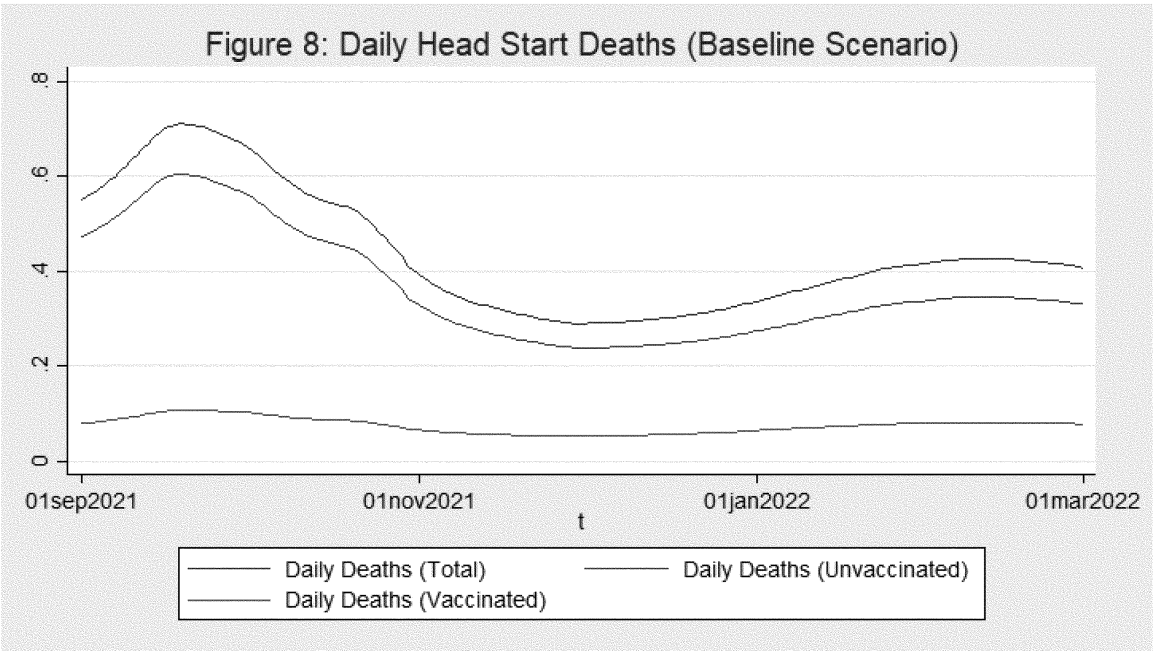
Figure 8 reports daily Head Start deaths attributable to COVID–19 under the baseline scenario. For the entire period of the baseline scenario, we anticipate fewer than one COVID–19 related death per day among Head Start staff. For the last week in our projections, covering February 23, 2022 to March 1, 2022, we estimate 2.9 weekly deaths out of the total Head Start staff population of 273,000. To provide additional context, this is a weekly incidence rate of 1.06 deaths per 100,000 individuals. The comparable adult weekly incidence rate is about 3.18 deaths per 100,000 individuals. Figure 9 reports daily Head Start hospital admissions. For the last week in our projections, we estimate 29 hospital admissions for a weekly incidence rate of 10.8 per 100,000.

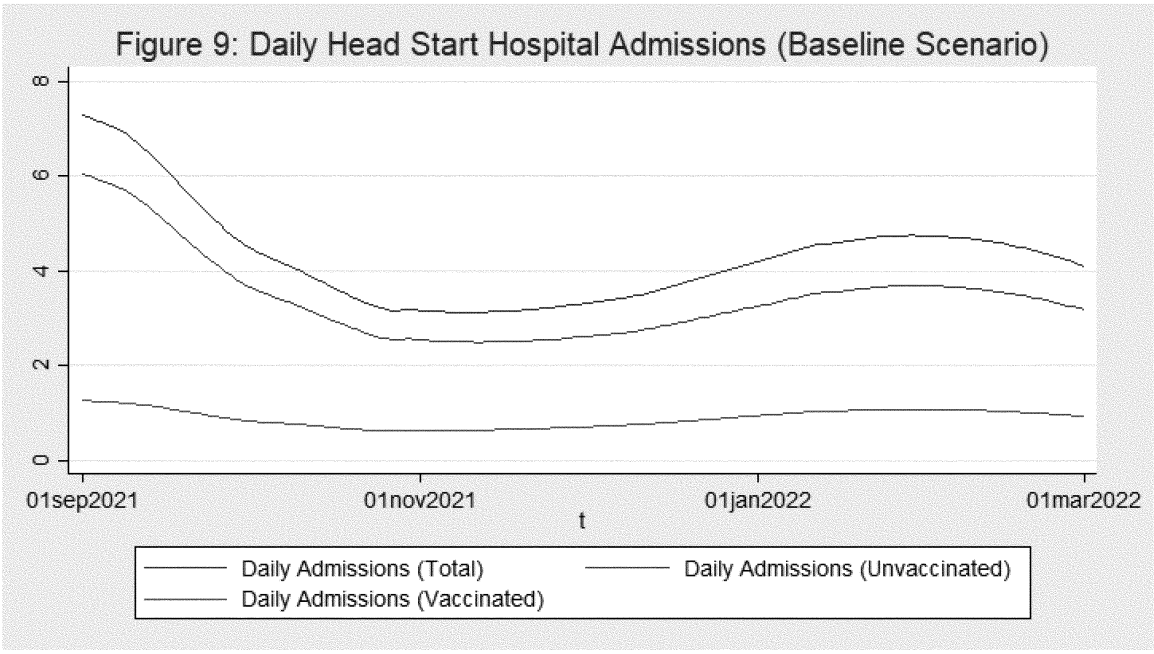
[111] 319,311/(567,704 − 637) ≈ 0.56.

[112] 92,960/(220,539 − 4,228) ≈ 0.43.

[113] 0.058/0.165 ≈ 0.35. 1 − 0.35 = 0.65.

[114] 0.43 * 0.65 ≈ 0.28.





Head Start Program Operating Status and Staffing

The Office of Head Start has tracked the operating status of programs since the onset of the pandemic. In March and April of 2020, more than 90% of programs closed all in-person operations. By August of 2020, 21% of programs had reopened for in-person services, 26% remained closed for in-person services due to COVID–19, and the remainder of programs were closed for summer months as regularly scheduled. In December 2020, data show the highest combined percentage (67%) of Head Start centers operating as solely virtual/remote or as hybrid, with an additional 5% of centers closed. Together, these centers account for over 13,500 centers nationwide. This represents many working parents for whom unpredictable closures and transitions to virtual learning come at a cost, present difficult decisions between employment and child care responsibilities, and major financial impacts on their household.

Most recently, July 2021 data show that 2% of centers were closed due to COVID–19, 14% of centers were operating virtual/remote, and 44% of centers were operating in a hybrid status, which includes programs that are alternating between in-person services, virtual or remote services, or some combination of the two. Only 35% of centers were operating fully in-person. We do not have comparable data for about 5% of centers.[115] While closures have declined, the majority of Head Start centers are still operating in virtual/remote or a hybrid status. We adopt these estimates as providing a reasonable representation of the operating status of Head Start centers under the baseline scenario of no regulatory action. These estimates are intended to represent a steady state of overall operating status under the baseline scenario rather than indicating that any particular center will remain in its current status without regulatory action. Table 3 presents the in-person days per week

[115] We are missing data on about 5% of centers. For the purposes of this analysis, we assign an operating status to these centers in proportion with the centers for which we have complete data.

by center status. For these estimates, we adopt several assumptions: (1) The average number of staff and children served by each center does not vary by center status; (2) that centers in hybrid operating status meet in person 2.5 days per week, on average; and (3) that centers in fully in-person status meet in person 5.0 days per week, on average. For the purpose of this analysis, we also assume that the centers with unknown operating status are distributed evenly across each center status category. For our estimate of the total number of children, we use ''funded enrollment,'' which refers to the number of children and pregnant people that are supported by federal Head Start funds in a program at any one time during the program year, but reduce this estimate by 1% to account for pregnant people enrolled in Early Head Start.[116]

Table 3. In-Person Days Per Week by Center Status

Center Status	Centers	Staff	Children	In-Person Days Per Week	In-Person Days Per Week	
					Staff	Children
Closed	414	5,453	17,264	0.0	0	0
Virtual/Remote	3,013	39,698	125,679	0.0	0	0
Hybrid	9,667	127,391	403,305	2.5	318,477	1,008,264
Fully In-Person	7,623	100,458	318,041	5.0	502,292	1,590,204
Total	20,717	273,000	864,289	N/A	820,769	2,598,467

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Early care and education providers, including Head Start programs, are currently experiencing significant challenges in recruiting and retaining staff that are attributable to the COVID–19 pandemic and general trends in early care and education labor markets. These ongoing challenges, which represent the baseline scenario and are not attributable to the interim final rule, are difficult to quantify; however, the section on Costs expands on this discussion. This discussion includes a range of estimates to inform how the requirements in this rule could exacerbate this issue for certain programs, which could include programs not being able to fully staff their classrooms.

E. Impact on Vaccine Coverage

The key parameter underlying the estimated benefits and costs of the interim final rule is the incremental impact on vaccine uptake, which is the difference between the share of individuals who are unvaccinated under the baseline scenario and who are induced to get fully vaccinated under the interim final rule. As we discuss further in the Benefits and Costs sections, higher rates of incremental vaccine uptake are associated with higher benefit estimates, but also lower overall costs. Given the importance of this parameter and its uncertain nature, we perform an analysis of several scenarios for vaccine uptake, and present estimates of the benefits and costs of the interim final rule for each scenario. Each of the scenarios adopt the following timing and simplifying assumptions:

(1) For the purposes of this analysis, we adopt November 22, 2021 as the public announcement date of the interim final rule.

(2) The effective date of the vaccination requirement is January 31, 2022. We anticipate that some Head Start staff will wait until January 31, 2022 to receive their final vaccination dose.

(3) We do not attribute any impact on the rate of fully vaccinated Head Start staff until at least December 6, 2021. The earliest impacts would be among Head Start staff who have received one COVID–19 dose as part of a two-dose series at the time of the public announcement of the interim final rule who are induced by the interim final rule to complete their two-dose series. The latest impacts would be among Head Start staff who receive their final dose on January 31, 2022, who will be considered fully vaccinated two weeks later, on February 14, 2022.

(4) The interim final rule describes exemptions from the vaccination requirement. For the purposes of this analysis, we assume that 5% of total Head Start staff will seek and be granted an exemption from the vaccination requirement.[117] These individuals will not be induced to get fully vaccinated under the interim final rule. This assumption translates to least 13,650[118] Head Start staff who will remain unvaccinated under all vaccine coverage scenarios.

Our upper-bound scenario is based on an observation contained in the HHS *Guidelines for Regulatory Impact Analysis,* which notes that ''[i]n most cases, the analysis focuses on estimating the incremental compliance costs incurred by the regulated entities, assuming full compliance with the regulation, and government costs.''[119] For the purpose of this analysis, we maintain the assumption that 5% of Head Start staff will seek and be granted an exemption, while the remaining 95% will be fully vaccinated. These represent two of the routes that Head Start staff can demonstrate full compliance with the interim final rule. We note that the HHS *Guidelines for Regulatory Impact Analysis* further recommend that ''[a]nalysts should consider the uncertainty associated with an assumption of full compliance and provide analysis of alternative assumptions, as appropriate.''

Our lower-bound scenario adopts an estimate drawn from an Issue Brief published by the HHS's Office of the Assistant Secretary for Planning and Evaluation (ASPE), which finds that ''[a]s of August 2021, approximately 30% of U.S. adults are

[116] *https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/no-search/hs-program-fact-sheet-2019.pdf.*

[117] This estimate is consistent with an assumption discussed in the Preamble of the Emergency Temporary Standard recently issued by the Department of Labor's Occupational Safety and Health Administration. ''OSHA estimates that some 5% of employees may have a medical contraindication or request an accommodation from the rule's requirements for disability or sincerely held religious belief reasons.'' *https://www.federalregister.gov/documents/2021/11/05/2021-23643/covid-19-vaccination-and-testing-emergency-temporary-standard.*

[118] 0.05 * 273,000 = 13,650.

[119] *https://aspe.hhs.gov/reports/guidelines-regulatory-impact-analysis.*

unvaccinated; among these, approximately 44% may be willing to get vaccinated against COVID–19.'' [120] This published finding is based on an analysis using survey data for Week 33 of the Household Pulse Survey (June 23–July 5, 2021). We perform an identical calculation using Week 39 (September 29–October 11) survey responses, which results in a lower estimate of 33.4%. We assume that 33.4% of the unvaccinated individuals will be induced to get fully vaccinated by this time under the policy scenario. Under this scenario, about 86.6% of Head Start staff are fully vaccinated by February 14, 2022.

These estimates are from a nationally representative survey of households, but are broadly consistent with responses from another survey specific to U.S. child care providers.[121] In this survey, which informs our baseline forecast of Head Start staff vaccine coverage, overall vaccine uptake among U.S. child care providers was 78.2%. Among unvaccinated survey respondents, including child care providers not affiliated with Head Start, the authors note that ''only 5.0% were 'absolutely certain' that they would get vaccinated in the future, 6.9% were 'very likely,' 28.2% were 'somewhat likely.' '' These percentages, which sum to 40.1%, suggest substantial room for additional vaccine uptake among child care providers, even though rates significantly exceeded the general population at the time of the survey. As a sample calculation, if 40.1% of the 21.8% of unvaccinated survey respondents get vaccinated, this would increase the overall vaccine uptake among U.S. child care providers from 78.2% to 86.9%. This estimate is slightly above our lower-bound estimate of vaccine coverage for Head Start staff under the interim final rule.

We anticipate that the vaccination requirement will induce more unvaccinated Head Start staff to get fully vaccinated than the lower-bound vaccine-uptake estimates suggest. For our primary scenario, we adopt the midpoint vaccine coverage rate between our lower- and upper-bound scenarios, and project overall vaccine coverage of 90.8% among Head Start staff by February 14, 2022.

Figure 10 presents our forecasts of the share of Head Start staff who are fully vaccinated under the baseline scenario, and our range of policy scenarios. For our baseline scenario, we estimate the share who are fully vaccinated of 79.8%, or 217,879 fully vaccinated Head Start staff out of 273,000 total staff. We estimate a range of estimates under of our policy scenario between 86.6% and 95.0%, for an incremental vaccine uptake of between 6.8% and 15.2%. For our primary policy scenario, we estimate overall vaccine coverage of 90.8%, for an incremental vaccine uptake of 11.0%. Under the primary scenario, we estimate 247,833 fully vaccinated Head Start staff, and an incremental 29,953 staff fully vaccinated attributable to the interim final rule.

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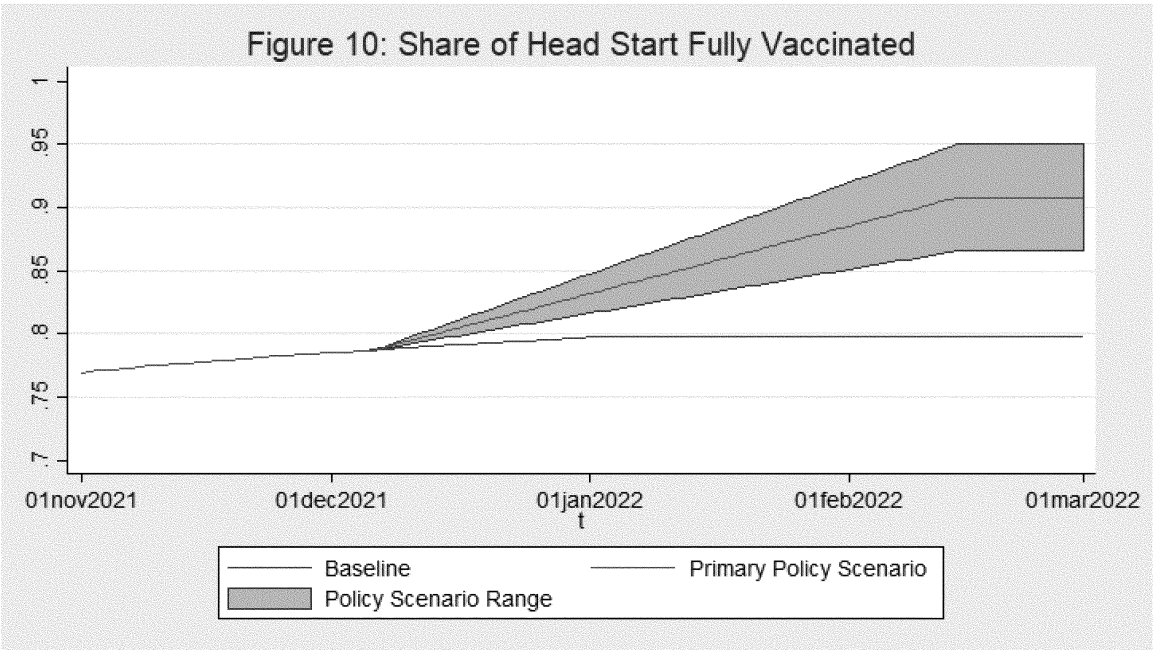


E. Benefits of the Rule

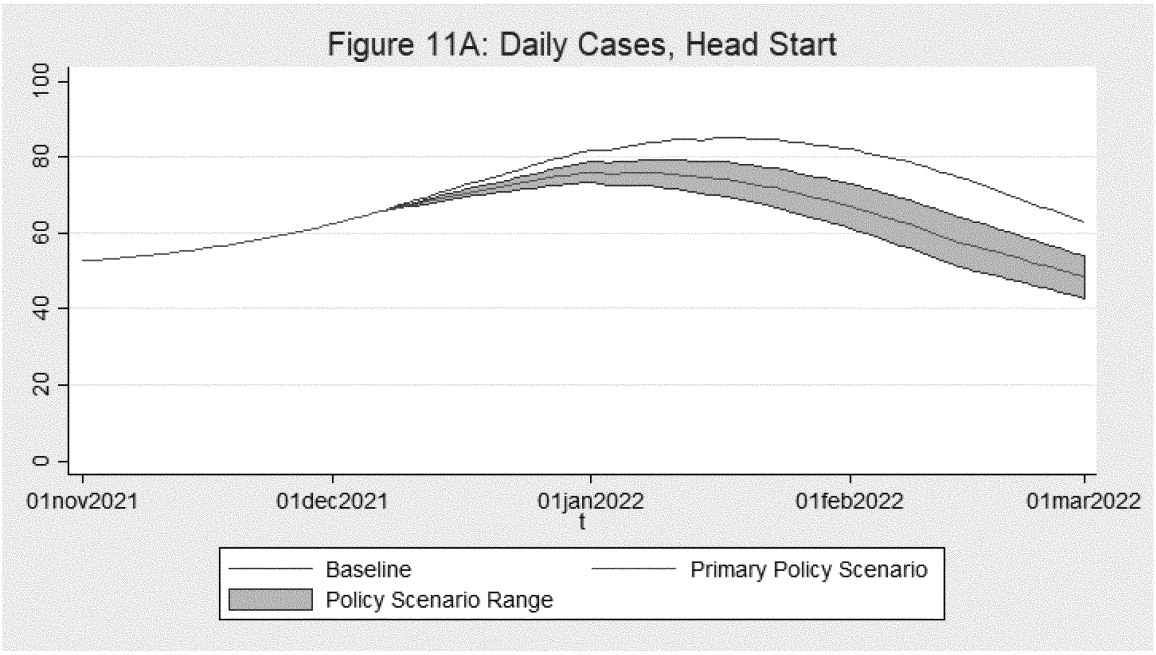
We follow identical procedures outlined in the baseline section to generate forecasts of COVID–19 cases, deaths, and hospitalizations that are consistent with a range of vaccine coverage estimates under the policy scenarios. We estimate the likely impacts of the interim final rule by calculating the difference between the measurable COVID–19 outcomes under the policy scenarios against the baseline scenario described in the previous section.

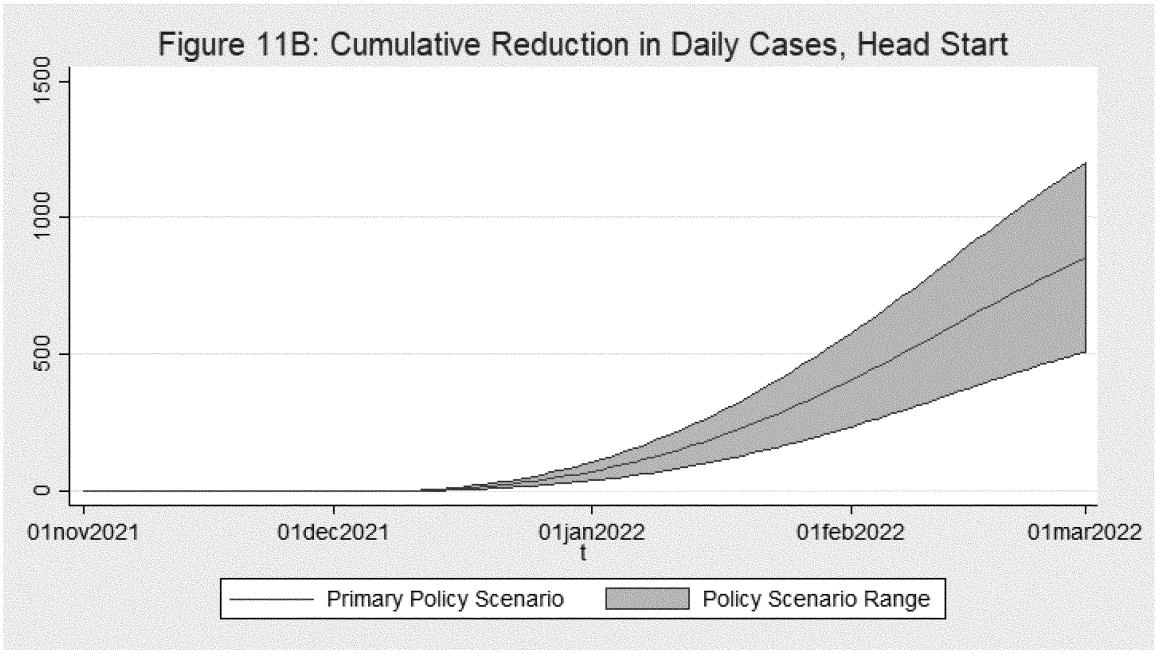
Reduction in Cases Among Head Start Staff

Figure 11A presents our estimates of the daily COVID–19 cases among Head Start Staff under each scenario. The baseline scenario corresponds to the estimates presented in Figure 7 in the previous section. Figure 11B presents the cumulative reduction in cases over time that are attributable to the interim final rule under the vaccine coverage scenarios. Through March 1, 2022, the impact of the interim final rule is cumulative COVID–19 case reductions between 510 and 1,198, which correspond to the range of vaccine coverage scenarios.

[120] *https://aspe.hhs.gov/reports/unvaccinated-willing-ib.*

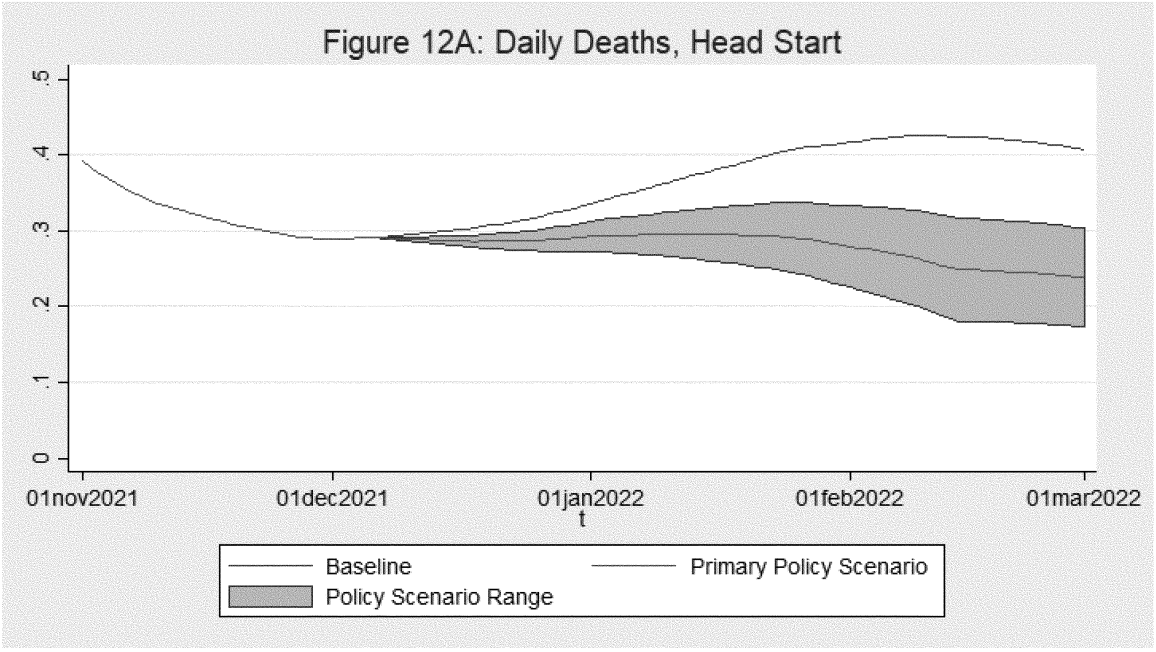
[121] Patel KM, Malik AA, Lee A, et al. (2021). ''COVID–19 vaccine uptake among US child care providers.'' *Pediatrics;* doi: 10.1542/peds.2021–053813.

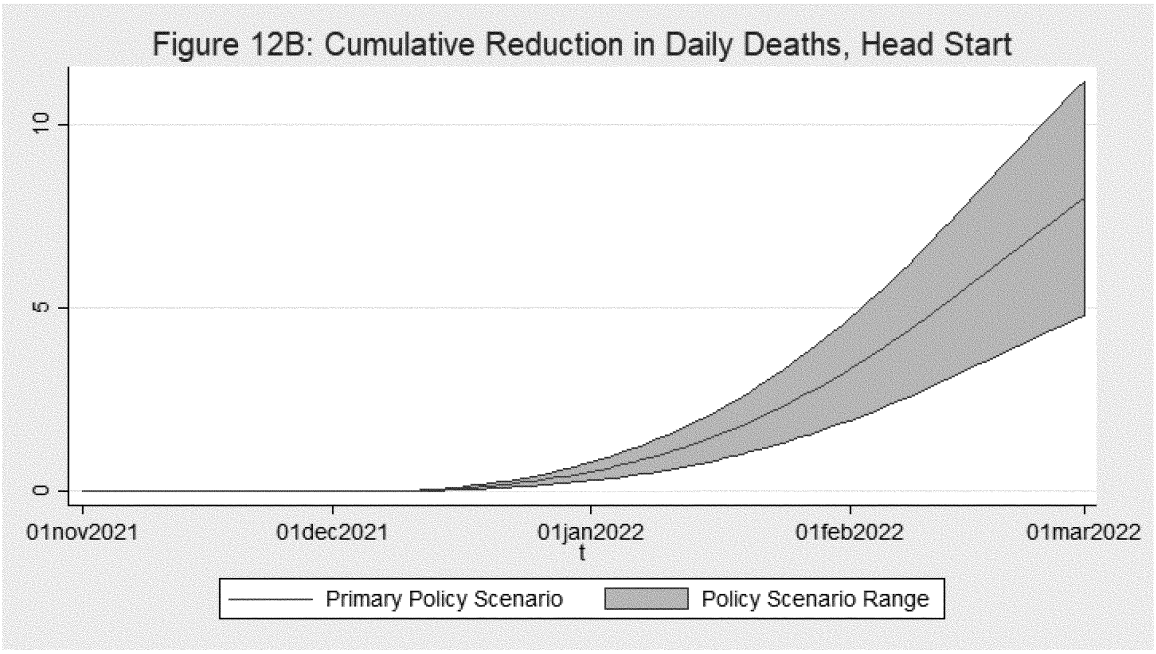




Reduction in Deaths Among Head Start Staff

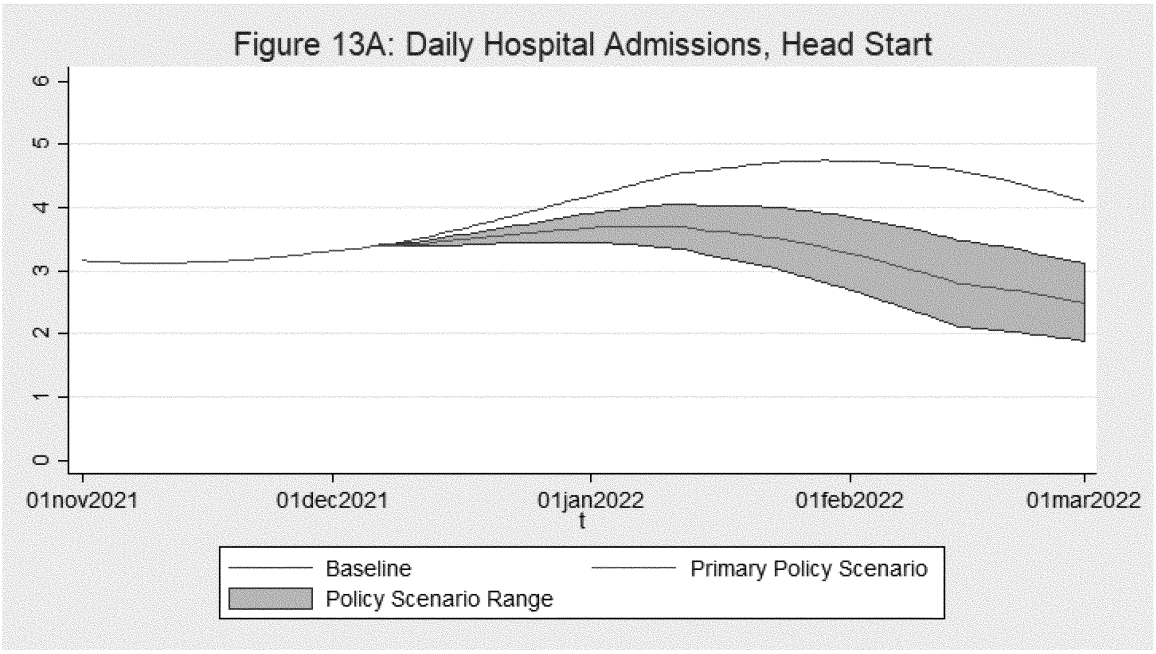
Figure 12A presents our estimates of the daily COVID–19 deaths among Head Start Staff under each scenario. The baseline scenario corresponds to the estimates presented in Figure 8 in the previous section. Figure 12B presents the cumulative reduction in deaths over time that are attributable to the interim final rule under the vaccine coverage scenarios. Through March 1, 2022, the impact of the interim final rule is cumulative COVID–19 mortality reductions between 4.8 and 11.2, which correspond to the range of vaccine coverage scenarios.

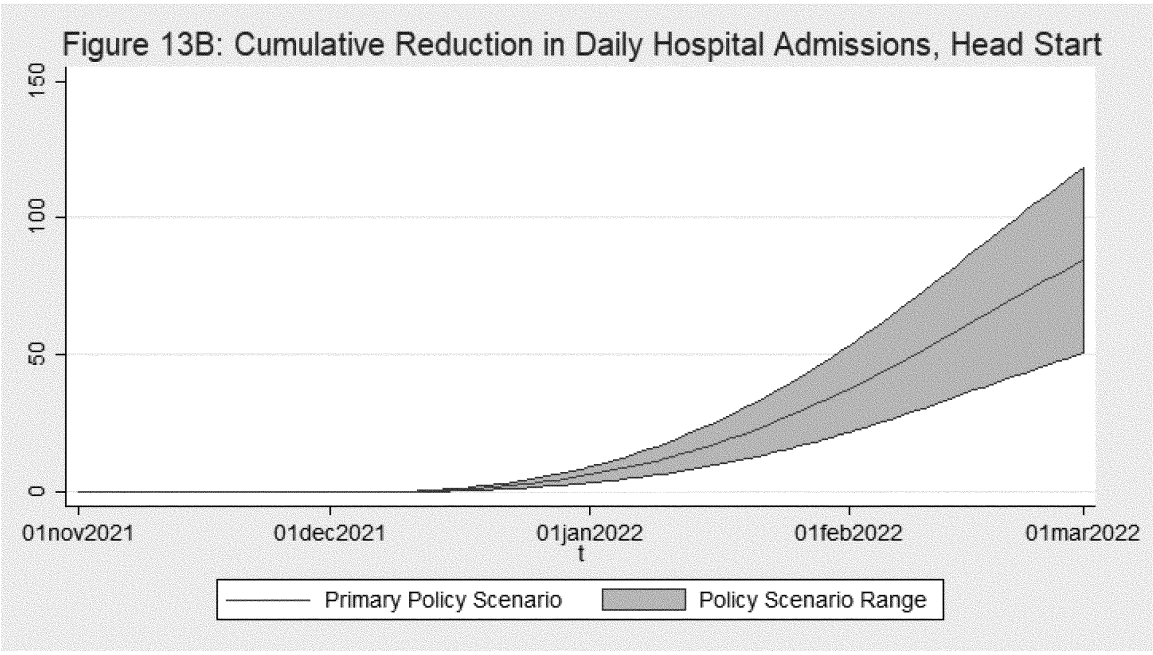




Reduction in Hospital Admissions Among Head Start Staff

Figure 13A presents our estimates of the daily COVID–19 hospital admissions among Head Start Staff under each scenario. The baseline scenario corresponds to the estimates presented in Figure 9 in the previous section. Figure 13B presents the cumulative reduction in hospital admissions over time that are attributable to the interim final rule under the vaccine coverage scenarios. Through March 1, 2022, the impact of the interim final rule is cumulative COVID–19 hospital admission reductions between 51 and 118, which correspond to the range of vaccine coverage scenarios.





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Valuing Health Benefits Among Head Start Staff

Table 3 summarizes several measurable improvements in COVID–19 outcomes for Head Start staff that are attributable to the interim final rule. For the baseline scenario of no new regulatory action, and for each of the vaccine coverage scenarios, we report the share of Head Start staff that are fully vaccinated by March 1, 2022, and the corresponding cumulative cases, deaths, and hospital admissions averted over the time horizon of the analysis.

IHME's daily projections for U.S. hospital admissions include about 35% that result in intensive care unit (ICU) admissions. Head Start hospital admissions estimates are adjusted downwards to reflect a lower rate of hospitalization among younger individuals. We similarly expect the share of hospitalizations that include an ICU admission to be lower for Head Start staff compared to the general adult population; however, we are not aware of an estimate that is directly transferable, and adjust this estimate of the share of hospital admissions that result in an ICU admission down by half. *We believe this assumption is more justified, in the context of this analysis, than not performing an adjustment.* Assuming about 17.5% of the cumulative hospital admissions result in an ICU admission, we estimate 76 ICU admissions under the baseline scenario, and between 55 and 67 ICU admissions under the interim final rule, depending on the vaccine coverage scenario. Therefore, we measure a reduction of between 9 and 21 ICU admissions under the interim final rule. We follow the same approach to calculate non-ICU hospital admissions for the remaining 82.5% of total hospital admissions.

Table 4. Cumulative Impacts Among Staff by Vaccine Coverage Scenario

Outcome	Baseline Scenario	Vaccine Coverage Scenario			Difference		
		Low	Primary	High	Low	Primary	High
Fully Vaccinated Rate	79.8%	86.6%	90.8%	95.0%	6.8%	11.0%	15.2%
Cases	7,724	7,214	6,870	6,526	-510	-854	-1,198
Deaths	37.3	32.4	29.3	26.1	-4.8	-8.0	-11.2
Hospital Admissions	428	377	343	309	-51	-84	-118
Non-ICU	352	310	282	255	-42	-69	-97
ICU	76	67	61	55	-9	-15	-21

Valuing risk reductions associated with regulations that address the COVID–19 presents major challenges. We adopt an approach to monetize the cumulative cases, deaths, and hospitalizations averted under the interim final rule by closely following the methodology described in an ASPE report on ''Valuing COVID–19 Mortality and Morbidity Risk Reductions in U.S. Department of Health and Human Services Regulatory Impact Analyses.'' [122] This paper addresses these challenges by summarizing the impacts of COVID–19 on health and longevity, describing the conceptual framework for valuation, investigating some of the available valuation research (as of March, 2021), and discussing the implications.[123] We note that the impact of the virus is rapidly evolving, and new data are continually emerging. We have reviewed the assumptions and evidence contained in this report and conclude that the quantitative estimates remain useful for assessing the impacts of this interim final rule.

Valuing these risk reductions using the estimates contained in the ASPE report requires assumptions that map the non-fatal risk reductions quantified in Table 4 into ''mild,'' ''severe,'' and ''critical'' case-severity categories. These categories are characterized by common symptoms experienced for an acute phase and post-acute phase. Below, we reference the description of each case-severity category from Table 3.2 Common Symptoms of Nonfatal COVID–19 Cases by Severity Level of the ASPE Report.[124]

For the acute phase of a critical case, ''[i]ndividuals will have early symptoms similar to those of mild and severe disease. Individuals may quickly progress to respiratory failure and may also have septic shock, encephalopathy (brain disease), heart disease or failure, coagulation dysfunction (inability of blood to clot normally), and acute kidney injury. Organ dysfunction can be life-threatening. Individuals with critical disease often receive prolonged mechanical ventilation.'' For the post-acute phase, ''[i]ndividuals are likely to have long-term physical and cognitive impairment similar to other critical illnesses.'' We initially assign the 9 to 21 averted ICU admissions to the critical case category, but we reduce these estimates by the number of deaths averted. This approach avoids the potential for double counting, since the underlying VSL estimates likely include the willingness-to-pay to avoid some morbidity prior to death.

The ASPE Report discusses these considerations in greater detail, noting that ''COVID–19 deaths are generally preceded by about two weeks of symptoms, including fever, shortness of breath, high respiratory rate, and cough. They may also involve being placed on mechanical ventilation in a medically induced coma.'' This is in contrast to ''[t]he studies that underlie the HHS VSL estimates, [which] focus largely on occupational risks that lead to relatively immediate death from injury.'' Therefore, we explore the sensitivity of the overall results to this approach. Including the value of a critical case to the value of the mortality reductions for these individuals prior to death would increase the total monetized health benefits by between $8.7 million and $20.3 million, depending on the vaccine coverage scenario. We do not include these estimates in the summary of monetized benefits.

For the acute phase of a severe case, ''[i]ndividuals will have early symptoms similar to those of mild disease, such as fever and cough, which may be accompanied by gastrointestinal symptoms, such as diarrhea. The disease continues to progress for over a week. Dyspnea (shortness of breath), high respiratory rate, and/or blood oxygen saturation of ≤93 percent occur. Individuals typically have pneumonia and require supplementary oxygen. Individuals with severe disease should be hospitalized.'' For the post-acute phase, ''[i]ndividuals may have post-acute symptoms, such as cough, shortness of breath, fatigue, and pain.'' We assign the 42 to 97 non-ICU hospital admissions averted to the severe case category.

For the acute phase of a mild case, ''[i]ndividuals will have symptoms of acute upper respiratory tract infection, which may include fever, fatigue, myalgia (muscle aches), cough, and sore throat. Some cases may have digestive symptoms, such as nausea, abdominal pain, and diarrhea. Loss of taste and smell are common symptoms. Individuals may have mild pneumonia (infection of the lungs), and some may have wheezing or dyspnea (shortness of breath) but blood oxygen saturation remains above 93 percent.'' For the post-acute phase, ''[i]ndividuals may have post-acute symptoms, such as cough, shortness of breath, fatigue, and pain.'' We initially assign the 510 to 1,198 cumulative cases averted to the mild case category, but we reduce these estimates by the corresponding estimates of critical and severe cases to avoid double counting. This yields an estimate of between 460 to 1,080 mild cases averted.

[122] *https://aspe.hhs.gov/reports/valuing-covid-19-risk-reductions-hhs-rias.*

[123] Additional relevant citations not contained in the report include Viscusi, W.K. Pricing the global health risks of the COVID–19 pandemic. J Risk Uncertain 61, 101–128 (2020). *https://doi.org/10.1007/s11166-020-09337-2* and Viscusi W.K. Economic lessons for COVID–19 pandemic policies [published online ahead of print, 2021 Mar 4]. South Econ J. 2021;10.1002/soej.12492. doi:10.1002/soej.12492.

[124] *https://aspe.hhs.gov/reports/valuing-covid-19-risk-reductions-hhs-rias.* Table 3.2 appears on page 35.

We considered a further adjustment to the estimate range for mild cases to account for the share of cases that are asymptomatic. As noted above, these estimates are derived from projections of *measured COVID–19 cases, rather than total COVID–19 infections.* Over the period of the analysis, these represent slightly less than half of the total projected infections, including those not confirmed through testing. This means that, while our measure of mild cases likely includes some confirmed cases that are asymptomatic, it does not include some symptomatic COVID–19 infections that are not confirmed through testing. The ASPE report also discusses the potential for ''cases that are initially asymptomatic or mildly symptomatic may ultimately lead to impaired health over the longer run,'' suggesting that the VSC estimates for mild cases may underestimate the full long-run health-related quality of life consequences of an infection. Given the multiple sources and potential direction of the bias, we have determined that it is appropriate to not make an explicit adjustment. However, we have incorporated uncertainty into the main analysis, which includes a range of total cases averted. We also perform a sensitivity analysis for all health benefits monetized in this analysis by applying a range of VSC and VSL estimates.

The mortality and morbidity risk reductions we identify in this regulatory impact analysis accrue to a working-age Head Start staff population. We have taken care to ensure that our estimates of the cumulative cases, deaths, and hospital admissions averted would not be biased upwards due to an overrepresentation of deaths and hospital admissions among individuals older than the typical Head Start staff. Thus, we adopt the population-average VSL and VSC estimates contained in the ASPE report, with a minor adjustment of 0.8% to account for real income growth, since the mortality and morbidity risk reductions occur in 2021 and the underlying estimates are from a 2020 base year.

Table 5A reports the mortality risk reductions attributable to the interim final rule, and the morbidity risk reductions, categorized by case-severity category. We monetize these impacts using a VSL of about $11.5 million, and VSC estimates that vary by case severity. We multiply the risk reductions by the appropriate VSL or VSC estimate to generate estimates of the value of these risk reductions. We sum these to generate a monetized benefit of the health benefits to Head Start staff attributable to the interim final rule under the vaccine coverage scenarios. Using a 3% discount rate, which affects the underlying value per quality-adjusted life year estimate used in the ASPE report to generate the VSC estimates, we report a total value of risk reduction of between $66.0 million and $154.1 million. Table 5B reports the same estimates using a 7% discount rate. Under this discount rate, we report a total value of risk reduction of between $68.2 million and $159.2 million. All estimates are reported using 2020 dollars. These impacts cover the period between the publication date of the interim final rule and March 1, 2022, the last day reported in the IHME projections.

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Table 5A. Value of COVID-19 Risk Reductions Among Staff, 3% Discount Rate

Risk Reduction	Vaccine Coverage Scenario			VSL or VSC	Value of Risk Reduction ($ millions)		
	Low	Primary	High		Low	Primary	High
Mortality Reductions	4.8	8.0	11.2	$11,501,365	$55.2	$92.0	$128.8
Morbidity Reductions							
Mild Cases	459.8	769.8	1,079.7	$5,846	$2.7	$4.5	$6.3
Severe Cases	41.6	69.4	97.2	$13,104	$0.5	$0.9	$1.3
Critical Cases	4.2	7.0	9.8	$1,814,400	$7.6	$12.7	$17.7
Total Value of Risk Reductions					$66.0	$110.1	$154.1

Table 5B. Value of COVID-19 Risk Reductions Among Staff, 7% Discount Rate

Risk Reduction	Vaccine Coverage Scenario			VSL or VSC	Value of Risk Reduction ($ millions)		
	Low	Primary	High		Low	Primary	High
Mortality Reductions	4.8	8.0	11.2	$11,501,365	$55.2	$92.0	$128.8
Morbidity Reductions							
Mild Cases	459.8	769.8	1,079.7	$9,778	$4.5	$7.5	$10.6
Severe Cases	41.6	69.4	97.2	$22,176	$0.9	$1.5	$2.2
Critical Cases	4.2	7.0	9.8	$1,814,400	$7.6	$12.7	$17.7
Total Value of Risk Reductions					$68.2	$113.7	$159.2

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Valuing Time Savings for Head Start Families From Reductions in Absenteeism

We also anticipate reductions in time spent by parents or other caretakers providing needed support for children due to COVID–19 infections among Head Start staff. Several assumptions are necessary to quantify this impact. Since 273,000 Head Start staff provide services for 864,289 children, a 1:3.2 ratio, we assume that each staff missing work due to a COVID–19 infection means that an average of 3.2 children will need support from parents or other caretakers during this absence. We assume that a typical COVID–19 case results in two weeks of missed work, which corresponds to an average of 5 days a week, with 6 hours per day of providing Head Start services. Combining these assumptions, we estimate that cases of COVID–19 among Head Start staff results in an average of 190 hours of support for children that will be provided by a parent or other caretaker. *As discussed earlier, the interim final rule is anticipated to reduce COVID–19 cases among Head Start staff by a cumulative 510 to 1,198 cases over the time horizon of the analysis. Each of these cases averted corresponds to 190 hours of time saved by parents or other caregivers.*

We also anticipate that a COVID–19 case at a center operating fully in-person can result in missed work for other Head Start staff who were in close contact and potentially exposed. This impact is limited to unvaccinated staff, since CDC guidance indicates that ''[p]eople who are fully vaccinated do not need to quarantine if they come into close contact with someone diagnosed with COVID–19.'' [125] We assume that all unvaccinated staff will be considered close contacts and need to quarantine. For simplicity, we adopt 20.2% as the share of Head Start staff unvaccinated on the last day of our baseline projections. We anticipate that Head Start staff at fully in-person centers represent 37% of the total staff cases, which is in line with the share of centers that are operating fully in-person, and that each center has about 13 staff, which is in line with the average number of staff per center. Among these 13 staff, about 3 are unvaccinated. To avoid double counting, we reduce this estimate by 1 to account for the initial COVID–19 case.

To monetize these impacts, we adopt a value of time based on after-tax wages. Our approach matches the default assumptions for valuing changes in time use for individuals undertaking administrative and other tasks on their own time, which are outlined in an ASPE report on ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.'' [126] We start with a measurement of the usual weekly earnings of wage and salary workers of $990.[127] We divide this weekly rate by 40 hours to calculate an hourly pre-tax wage rate of $24.75. We adjust this hourly rate downwards by an effective tax rate of about 17%, resulting in a post-tax hourly wage rate of $20.55. We report a range for the total value of time saved of between $3.3 million and $7.5 million, depending on the vaccine coverage scenario.

[125] *https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-contact-tracing/about-quarantine.html.*

[126] *https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework.*

[127] *https://www.bls.gov/news.release/pdf/wkyeng.pdf, second quarter of 2021.*

Table 6. Value of Time Savings from Reduced Absenteeism

Impact	Low	Primary	High
Cases Averted	510	854	1,198
Cases Averted at In-Person Centers	188	314	441
Unvaccinated Close Contacts	1.7	1.7	1.7
Additional Quarantines Averted	312	522	732
Total Absences Averted	822	1,376	1,930
Hours Saved Per Absentee	190	190	190
Total Hours Saved	156,198	261,406	366,614
Value of Time in Hours	$20.55	$20.55	$20.55
Value of Reduced Absenteeism	$3,210,121	$5,372,304	$7,534,486

As a sensitivity analysis, we augmented the post-tax wage rate to account for non-wage benefits. To capture non-wage benefits, we apply an estimate of the share of compensation from employer supplements to wages and salaries of about 18%, or $4.55 per hour using a pre-tax hourly wage as the base.[128] This results in a value of time of $25.10 per hour. Using this alternative value of time, the value of time savings from reduced absenteeism would range from $3.9 million to $9.2 million, with a primary estimate of $6.6 million.

Benefits Related to Head Start Program Operating Status

We consider it probable that the substantial reduction in COVID–19 cases per day among Head Start staff and volunteers will result in fewer center closures due to COVID–19. For a number of reasons, the interim final rule will not eliminate the risk of COVID–19 among Head Start staff, volunteers, and children. Among these reasons, we do not expect that all staff and volunteers will be fully vaccinated under the interim final rule. We also do not expect many children to be fully vaccinated under either the baseline or any of the vaccine coverage scenarios under the policy for the time horizon of the analysis. As described in our discussion of the baseline scenario, being fully vaccinated is associated with a substantial reduction in the risk of a COVID–19 infection; however, it does not eliminate this risk. Thus, since the interim final rule will not eliminate the risk of COVID–19, we cannot reasonably conclude that all currently closed Head Start centers will reopen and remain open for the time horizon of the analysis. We do not estimate the reduction in closures anticipated due to the interim final rule; however, we present a calculation of how we would value this impact on a per-center basis.

As discussed in the Baseline section, the most recent data available at the time of this analysis indicates that 393 Head Start centers were closed due to COVID–19, representing about 2% of centers. We also presented an estimate of 17,264 children potentially unable to access Head Start services due to these closures, which is about 42 children per center. We restate the assumption that each child not served by these centers requires 30 hours of support per week from family and caregivers that would normally be provided by Head Start staff and volunteers. This means each center closure results in 1,318 hours of support needed per week that would typically be provided by Head Start staff. Combined with the approach to valuing time described earlier, this means each center closure averted by the interim final rule could result in time saved for parents and caregivers valued at $25,722 per week. If 1% of total Head Start centers reopen as a result of the interim final rule, we would monetize these benefits at $5.3 million per week.

We also anticipate that the reduction in COVID–19 infection risks among Head Start staff, paired with the mask requirement, will result in a larger share of centers operating fully in person. As discussed in the Baseline section, 3,013 centers are operating in a virtual/remote status and 9,667 centers are operating in a hybrid status. We estimate that 125,679 children are receiving services in centers operating in a virtual/remote status and that 403,305 children are receiving services in centers operating in a hybrid status. We anticipate that centers transitioning from virtual/remote status to hybrid status, or from hybrid status to fully in-person status could result in time saved for parents and caregivers. We do not provide an estimate, but we expect the value of time saved for these impacts would be less than the value of time saved from reopening closed centers.

The value of time saved for families due to Head Start centers reopening, centers transitioning from virtual/remote status to hybrid status, and centers transitioning from hybrid status to fully in-person status are likely to be substantial. However, these time savings are only part of the anticipated benefits to children and families as the result of fewer closures, and more in-person services. *Head Start* promotes school readiness for children in low-income families by offering educational, nutritional, health, social, and other services. We expect that Head Start centers that are able to reopen or move towards more in-person services under the interim final rule will be more effective in meeting these goals and the needs of Head Start families.

Valuing Health Benefits Among Head Start Volunteers

The interim final rule requires volunteers that interact with children at Head Start programs to be fully vaccinated. In 2019, approximately 1,061,000 adults volunteered in their local Head Start program. Of these, 749,000 were parents of Head Start

[128] *https://fredblog.stlouisfed.org/2018/10/employer-contributions/.*

children.[129] We have less information about these adults than for Head Start staff. For the purposes of providing estimates under the baseline and interim final rule, we make the following assumptions:

1. The baseline vaccine coverage rate for Head Start volunteers matches the overall adult vaccine coverage rate.

2. The mortality and morbidity risks for adult Head Start volunteers match the risks for Head Start staff, except through differences in vaccine coverage.

3. The requirement under the interim final rule will be less salient to unvaccinated volunteers than for staff since it is not linked to employment. We start with the lower-bound incremental vaccine-uptake estimate that, among unvaccinated adults, approximately 33.4% will be induced to get fully vaccinated. As discussed earlier, this estimate is based on an analysis of the Household Pulse Survey. We reduce this estimate by half, which is similar to excluding adults who are ''unsure about getting a vaccine,'' and results in an incremental vaccine-uptake estimate of about 16.7%.

4. The volunteers most likely to be impacted by the policy are the volunteers associated with centers operating under a hybrid or fully in-person status. For volunteers at centers that are closed or in a virtual/remote operating status, we adopt an incremental vaccine-uptake of 0%.

5. We assume that the requirement will be even less salient for volunteers associated with centers operating in hybrid status. For these volunteers, we further reduce the incremental vaccine-uptake estimate by half, which is similar to excluding adults who ''will probably get a vaccine.'' This results in an incremental-vaccine uptake of about 8.4%.

6. We do not estimate a second incremental vaccine-uptake scenario, such as the upper-bound full-compliance scenario for staff, since volunteers can comply with the requirement by choosing to not interact with children in an in-person Head Start setting. We also note that some of these volunteers may be induced to get vaccinated due to another COVID–19 vaccination requirement.

7. For the purposes of this analysis, we assume that volunteers are distributed evenly across Head Start centers, regardless of operating status.

Table 7 summarizes these assumptions for the number of volunteers, and the incremental vaccine-uptake assumptions that vary by center operating status.

Table 7. Vaccine Uptake Among Head Start Volunteers by Center Status

Center Status	Centers	Volunteers	Vaccine-Uptake Assumption
Closed	414	21,193	0.0%
Virtual/Remote	3,013	154,283	0.0%
Hybrid	9,667	495,097	8.4%
Fully In-Person	7,623	390,426	16.7%
Total	20,717	1,061,000	N/A

We follow identical steps for estimating the baseline scenario and policy scenario for Head Start staff, except to substitute the number of volunteers and vaccine-uptake assumptions for each center operating status category. As noted above, we also assume that the baseline vaccination coverage among volunteers matches the adult vaccination coverage, rather than the higher Head Start staff vaccination coverage.

Table 8 summarizes several measurable improvements in COVID–19 outcomes for Head Start volunteers at centers operating fully-in person that we attribute to the interim final rule. We estimate a total increase of 28,163 volunteers who are fully vaccinated, or about 2.7% of the total volunteers. To put this into the context of other vaccine requirements and to continue the discussion of attribution of impacts, we consider the Head Start volunteers under the baseline scenario who are also covered by the DOL ETS as employees of covered employers. DOL recently estimated 27.0% of covered employees would be vaccinated under the ETS, not including the 62.4% of covered employees vaccinated in the baseline, pre-ETS.[130] If every Head Start volunteer was covered by this interim final rule, the DOL ETS as an employee of a covered employer, and no other vaccine requirements, our 2.6% estimate would attribute about 10% of the incremental vaccine coverage to this interim final rule and about 90% to the DOL ETS. As a sensitivity analysis on the appropriate attribution of impacts, we also report the net benefits of the interim final rule, excluding all benefits and costs associated with volunteers. These estimates are identical to the policy alternative of not including volunteers in the scope of the policy, which appears in Table 26.

For the baseline scenario of no new regulatory action, and for interim final rule scenario, we report the share of these volunteers that are fully vaccinated by March 1, 2022, and the corresponding cumulative cases, deaths, and hospital admissions averted over the time horizon of the analysis. Table 9 presents the same estimates for Head Start volunteers associated with centers in hybrid operating status. Table 10 presents the same estimates that combine Head Start volunteers associated with centers in virtual/remote and closed operating statuses. Table 11 presents the estimates for all Head Start volunteers.

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[129] *https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/no-search/hs-program-fact-sheet-2019.pdf.*

[130] *https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-23643.pdf.* Table IV.B.8.

Table 8. Impacts Among Volunteers at In-Person Centers

Outcome	Baseline	Interim Final Rule	Difference
Fully Vaccinated Rate	73.8%	78.2%	4.4%
Cumulative Cases	10,368	10,035	-333
Cumulative Deaths	130.1	122.9	-7.2
Cumulative Hospital Admissions			
Non-ICU	731	693	-37
ICU	158	150	-8
Total	888	843	-45

Table 9. Impacts Among Volunteers at Hybrid Centers

Outcome	Baseline	Interim Final Rule	Difference
Fully Vaccinated Rate	73.8%	76.0%	2.2%
Cumulative Cases	13,421	13,273	-148
Cumulative Deaths	170.6	167.2	-3.4
Cumulative Hospital Admissions			
Non-ICU	957	940	-17
ICU	206	203	-4
Total	1,163	1,142	-21

Table 10. Impacts Among Volunteers at Virtual/Remote and Closed Centers

Outcome	Baseline	Interim Final Rule	Difference
Fully Vaccinated Rate	73.8%	73.8%	0.0%
Cumulative Cases	5,599	5,599	0
Cumulative Deaths	71.9	71.9	0
Cumulative Hospital Admissions			
Non-ICU	400	400	0
ICU	86	86	0
Total	486	486	0

Table 11. Impacts Among All Head Start Volunteers

Outcome	Baseline	Interim Final Rule	Difference
Cumulative Cases	29,388	28,907	-481
Cumulative Deaths	372.6	362.1	-10.6
Cumulative Hospital Admissions			
Non-ICU	2,087	2,033	-55
ICU	450	438	-12
Total	2,538	2,471	-66

We value the mortality and morbidity risk reductions experienced by Head Start volunteers following an identical methodology described above for Head Start staff. This includes the process for categorizing morbidity reductions by case-severity category, and the adjustments to prevent double counting. Table 12 presents the total value of COVID–19 mortality and morbidity risk reductions for Head Start volunteers across all centers, for a 3% discount rate, *which affects the value per quality-adjusted life year estimates underlying the VSC estimates. Table 13 presents the same estimates for a 7% discount rate.*

Table 12. Value of COVID-19 Risk Reductions Among Volunteers, 3% Discount Rate

Risk Reduction	Impact	VSL or VSC (3%)	Value of Risk Reduction
Mortality Reductions	10.6	$11,501,365	$121,440,804
Morbidity Reductions			
Mild Cases	414	$5,846	$2,422,527
Severe Cases)	54.5	$13,104	$714,294
Critical Cases	1.2	$1,814,400	$2,176,442
Total Value of Risk Reductions			$126,754,066

Table 13. Value of COVID-19 Risk Reductions Among Volunteers, 7% Discount Rate

Risk Reduction	Impact	VSL or VSC (7%)	Value of Risk Reduction
Mortality Reductions	10.6	$11,501,365	$121,440,804
Morbidity Reductions			
Mild Cases	414	$9,778	$4,051,467
Severe Cases	54.5	$22,176	$1,208,805
Critical Cases	1.2	$1,814,400	$2,176,442
Total Value of Risk Reductions			$128,877,518

Summary of Monetized Benefits

We identify several sources of monetized benefits that are attributable to the interim final rule. Table 14 reports the monetized benefits from mortality and morbidity risk reductions to Head Start staff, mortality and morbidity risk reductions to Head Start volunteers, and time savings for parents and caregivers. These estimates cover both Head Start staff vaccination coverage scenarios, and correspond to VSC estimates using a 3% discount rate. All estimates cover the time period between the publication of the interim final rule and March 1, 2022, and are reported in 2020 dollars. Table 15 reports the same estimates using a 7% discount rate.

Table 14. Monetized Benefits Attributable to the Interim Final Rule, 3% Discount Rate

Value of Impact	Low	Primary	High
COVID-19 Risk Reductions, Staff	$66,021,974	$110,059,221	$154,096,444
COVID-19 Risk Reductions, Volunteers	$126,754,066	$126,754,066	$126,754,066
Absenteeism Reductions	$3,210,121	$5,372,304	$7,534,486
Total Monetized Benefits	$195,986,161	$242,185,591	$288,384,996

Table 15. Monetized Benefits Attributable to the Interim Final Rule, 7% Discount Rate

Value of Impact	Low	Primary	High
COVID-19 Risk Reductions, Staff	$68,206,983	$113,715,169	$159,223,331
COVID-19 Risk Reductions, Volunteers	$128,877,518	$128,877,518	$128,877,518
Absenteeism Reductions	$3,210,121	$5,372,304	$7,534,486
Total Monetized Benefits	$200,294,622	$247,964,991	$295,635,335

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In addition to the impacts that we monetize in this analysis, we anticipate that the increase in vaccine coverage attributable to the interim final rule will result in indirect health benefits from reduced transmission of SARS–COV–2. These impacts include reductions in secondary infections from vaccinated Head Start staff and volunteers to other staff and volunteers, children, and families. We anticipate that the masking requirement will also reduce transmission at in-person Head Start settings from individuals covered by the requirement. This impact includes a reduction in COVID–19 transmission from children to Head Start teachers, staff, and other children. The reductions in transmission attributable to the interim final rule will result in additional, unquantified reductions in mortality and morbidity risks to Head Start children and families, and to the general public.

We request comment on potential quantitative estimation of benefits for Head Start staff who receive exemptions (associated with ancillary provisions and reduced exposure when colleagues are vaccinated) using a study by Chen, Glymour, et al. (2021).[131] In this paper, estimates of excess mortality among 18- to 65-year-olds in California during the eight months from March to October, 2020, are summarized across various industry categories, including teacher assistants, for whom the estimated ratio is 1.28.[132] The ''unemployed or missing [employment data]'' category has an excess mortality risk ratio of 1.23—which may yield a reasonable estimate of the new risk level in cases of rule-induced staff turnover. During most of the eight months covered by the Chen et al. study, California imposed stay-at-home requirements, but these policies were relaxed somewhat during the early and mid-summer, the result being an increase in COVID–19 mortality. Visual inspection of Chen et al.'s Figure 2 allows for estimation analogous to that described above, using the excess mortality risk ratios for August 1, and yielding a result that the scope for workplace safety improvements is lesser in the context of relatively free movement and activity, as compared with a situation of broader non-workplace mitigation measures. In other words, whatever the overall effectiveness of Cal/OSHA's workplace health and safety requirements—presumably similar to this IFR's ancillary provisions—it should be reduced substantially when extrapolated to a context without widespread stay-at-home policies. An additional tendency toward overstatement in the potential estimation approach exists because it does not incorporate a netting off of the impacts of other jurisdictions'—including California's own—mitigation activities. (In other words, it would be necessary to use the correct baseline before attributing benefits to this IFR.) By contrast, this suggested quantification method has a tendency toward underestimation in that it does not account for reduction in exposure due to exemption-receiving Head Start staff being surrounded by colleagues who are more widely vaccinated. In addition to seeking comment on how to address these challenges in a potential quantitative estimate of benefits for exemption recipients, we request feedback on the potential to use literature such as Chen, Glymour et al. to proxy the new risk level for non-turnover cases.

F. Costs of the Rule

The most significant cost of the interim final rule stems from the potential for Head Start staff to decline COVID–19 vaccination. This would result in a number of potential consequences, each of which is likely to represent a substantial social cost. Table 16 presents the number of Head Start staff anticipated to be fully vaccinated under the vaccine coverage scenarios, under a shared assumption that 5% of Head Start staff will seek and receive an exemption from the vaccination requirement. Under the lower-bound vaccine coverage scenario, as many as

[131] Chen, Yea-Hung, Maria Glymour, Alicia Riley, John Balmes, Kate Duchowny, Robert Harrison, Ellicott Matthay, Kirsten Bibbins-Domingo. ''Excess mortality associated with the COVID–19 pandemic among Californians 18–65 years of age, by occupational sector and occupation: March through October 2020.'' medRxiv 2021.01.21.21250266; doi: *https://doi.org/10.1101/2021.01.21.21250266.*

[132] The list of occupations with specific estimates differs, omitting teacher assistants, in a subsequent version of the paper. Chen, Yea-Hung, Maria Glymour, Alicia Riley, John Balmes, Kate Duchowny, Robert Harrison, Ellicott Matthay, Kirsten Bibbins-Domingo. ''Excess mortality associated with the COVID–19 pandemic among Californians 18–65 years of age, by occupational sector and occupation: March through November 2020.'' *PLoS One,* June 4, 2021 *https://doi.org/10.1371/journal.pone.0252454.*

23,035 Head Start staff will not meet the vaccination requirement and also not receive an exemption. The upper-bound vaccine coverage scenario reflects all Head Start staff that do not meet the vaccination requirement receiving an exemption. Under our primary scenario, 11,517 Head Start Staff will not meet the vaccination requirement and also not receive an exemption from the vaccination requirement.

Table 16. Head Start Staff COVID-19 Vaccine Requirement Response Possibilities

Outcome Under Policy Scenario	Low	Primary	High
Fully Vaccinated Rate	86.6%	90.8%	95.0%
Exemption Rate	5.0%	5.0%	5.0%
Compliance Rate, Pre-Turnover	91.6%	95.8%	100.0%
Head Start Staff in Compliance, Pre-Turnover	249,965	261,483	273,000
Potential Head Start Staff Turnover	23,035	11,517	0

We anticipate some staff employed by Head Start programs will choose to leave the program due to vaccination and mask mandates. There are already significant challenges in recruiting and retaining staff among early care and education providers including Head Start and the requirements in this rule could exacerbate this issue for certain programs, resulting in programs not being able to fully staff their classrooms. This could also result in costs to programs to recruit new qualified staff to replace those staff that leave the program and may result in interruption of services for children and families.

Costs Associated With Head Start Staff Vacancies

In this section, we describe our approach for valuing the costs associated with Head Start staff vacancies associated with quitters that are attributable to the interim final rule. We follow many of the assumptions contained in the Benefits section that outline the value of time savings for parents and caretakers of children attributable to the interim final rule through vaccine coverage and reduced COVID–19 cases among Head Start teachers. For each COVID–19 case averted, parents and caretakers experienced 190 hours of time savings, assuming each COVID–19 case lasts two weeks. To value the countervailing risk of staff vacancies, we adopt an assumption that each Head Start staff that quits in response to the interim final rule will leave a vacancy that lasts an average of two weeks. This assumption is intended to reflect an average duration among vacancies that are filled faster and vacancies that are filled slower than two weeks. It is also intended to be inclusive of any efforts by Head Start centers that anticipate resignations on the effective date of the policy to identify replacements when the vaccine requirement takes effect. We also anticipate that Head Start centers will be able to prepare in advance for these vacancies and reduce the impact on families through increased caseloads per staff. This preparation would not be possible for absenteeism due to a COVID–19 case or outbreak. We reduce the average number of families affected by half, which results in an overall estimate of about 95 hours of time costs for parents and caretakers of children receiving Head Start services per vacancy from resignations. We are not aware of another estimate of how long a typical vacancy of this nature lasts; however, given that we anticipate this to be a significant cost attributable to the interim final rule, we have determined that these assumptions are more justified, in the context of this analysis, than not monetizing this cost. We acknowledge significant uncertainty in several of these estimates and discuss the nature of and implications of each source.

We also include a cost of training the replacement Head Start staff. We assume that new-employee training takes an average of 40 hours, and we adopt a value of time based on the median wage rage of preschool and kindergarten teachers of $14.36 per hour.[133] We double this wage to generate a fully loaded wage that accounts for benefits and other indirect costs. Table 17 reports the costs of vacancies and costs of training under the vaccine coverage scenarios.

[133] *https://www.bls.gov/oes/current/naics4_624400.htm.*

Table 17. Costs of Staff Vacancies

Impact	Low	Primary	High
Vacancies	23,035	11,517	0
Hours per Vacancy	95	95	95
Total Hours	2,187,747	1,093,873	0
Value of Time	$20.55	$20.55	$20.55
Subtotal, Vacancy Costs	$44,961,638	$22,480,819	$0
Hours Training			
Replacements	40	40	40
Value of Time	$28.72	$28.72	$28.72
Subtotal, Training Costs	$26,462,078	$13,231,039	$0
Total	$71,423,717	$35,711,858	$0

Table 17 presents cost estimates that vary by the vaccine coverage scenarios, which directly impact the number of vacancies that we attribute to the interim final rule. For these calculations, we adopt a common estimate of two weeks for Head Start centers to fill these vacancies. As noted in the baseline section, early care and education providers are currently experiencing significant challenges in recruiting and retaining staff that are attributable to the COVID–19 pandemic and general trends in early care and education labor markets. The general trends in early care and education labor markets suggest that filling these vacancies could take longer than two weeks. However, the interim final rule directly addresses the risk of SARS–COV–2 transmission at Head Start centers. The vaccination and masking requirements might lead to new hiring of employees who would not feel safe working in these environments absent these rules. This effect would reduce the average time to fill each vacancy. Alternatively, this could represent an additional source of benefits not captured in the main analysis elsewhere.

These cost estimates reflect one approach to account for the cost of staff vacancies. Other approaches may be reasonable. For example, in the context of its interim final rule with comment period that requires COVID–19 vaccinations for workers in most health care settings that receive Medicare and Medicaid reimbursement, CMS calculates the likely magnitude of hiring costs by applying an analysis of the direct hiring costs for workers in the long-term care sector.[134] After updating for inflation, CMS reports a direct hiring cost of $4,000 per worker.[135] The total cost estimates in Table 17 amount to $3,100 per worker. Substituting CMS's per-worker estimate would result in a range of total cost estimates from $0 to $92 million, with a central estimate of $46 million.

The cost of staff vacancies estimates also reflect an estimate of the value of time of $20.55 per hour, which we also use to estimate the benefits from reduced absenteeism. In a sensitivity analysis for those benefits, we applied a higher value of time of $25.10. Performing an identical sensitivity analysis for these costs yield a higher central estimate of vacancy costs of $27.5 million, which is a $5.0 million increase compared to the estimate in Table 17. This value of time would also yield a higher estimate of vacancy costs under the low-coverage scenario of $54.9 million, which is a $10.0 million increase compared to the estimate in Table 17.

In addition to the costs we identify and monetize related to staff vacancies, we also note the potential costs associated with reduced support from volunteers. However, as with staff, it is also conceivable that some individuals who do not currently feel safe volunteering at in-person Head Start settings will feel comfortable volunteering under the interim final rule. On net, this could increase the support Head Start centers receive from volunteers.

Cost to Head Start Staff and Volunteers to Get Fully Vaccinated

We identify a second cost related to Head Start staff and volunteers getting fully vaccinated. We adopt an estimate of 2 hours as the time necessary to receive one COVID–19 vaccine dose, and adopt a simplifying assumption that each individual induced to get fully vaccinated under the interim final rule will receive two vaccine doses. This estimate is intended to be inclusive of scheduling time; commuting time; time receiving a vaccine dose; waiting time, including after receiving a vaccine dose to watch for any reactions; and recovery time. We value the time spent to get fully vaccinated using a $20.55 per hour value of time, described above, for a total value of time per person of about $82. We also include costs associated with the vaccine doses and costs of administration. Using an estimated $20 cost per dose of vaccine, $20 as the cost per vaccine administration, we compute the cost of vaccine doses and administration of $80 per person. Table 18 reports the total costs related to vaccination.

[134] Dorie Seavey, ''The Cost of Frontline Turnover in Long-Term Care,'' Better Jobs Better Care Report, Washington, DC: Institute for the Future of Aging Services, American Association of Homes and Services for the Aging. 2004

[135] *https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-23831.pdf.*

Table 18. Costs Related to Vaccination

Cost Element	Low	Primary	High
Additional Staff Vaccinated	18,436	29,953	41,470
Additional Volunteers Vaccinated	28,163	28,163	28,163
Hours to Receive One Dose	2	2	2
Doses per Person	2	2	2
Value of Time in Hours	$20.55	$20.55	$20.55
Value of Time per Person	$82	$82	$82
Subtotal, Value of Time for Staff	$1,515,532	$2,462,324	$3,409,116
Subtotal, Value of Time for Volunteers	$2,315,203	$2,315,203	$2,315,203
Cost per Dose of Vaccine	$20	$20	$20
Cost per Vaccine Administration	$20	$20	$20
Doses per Person	2	2	2
Cost of Vaccine Doses and Administration per Person	$80	$80	$80
Subtotal, Vaccine Doses and Administration	$3,727,923	$4,649,305	$5,570,686
Total Costs of Vaccination	$7,558,658	$9,426,831	$11,295,005

The costs related to vaccination reflect an estimate of the value of time, $20.55 per hour, used elsewhere in this analysis. In other cases where this value of time is applied, we have also performed a sensitivity analysis that applies a higher value of time of $25.10. Performing an identical sensitivity analysis for these costs yields a value of time per person to get vaccinated of about $100. This higher value of time results in total costs of between $8.4 million and $12.6 million, with a central estimate of $10.5 million, which is an increase of between $0.8 million and $1.3 million. Regardless of the chosen value of time, the costs in Table 18 may be underestimated, since they do not include costs associated with adverse events reported after COVID–19 vaccination.[136]

Cost of Masking

This regulation also requires mask wearing for all adults and children age 2 and older in certain in-person Head Start settings. As an intermediate step, we estimate the total in-person days per week for staff, children, and volunteers. We replicate the in-person days per week for staff and children using the estimates reported in Table 3, but we reduce the estimate for children by 14% to account for children younger than age 2 that are not subject to the requirement. To estimate the in-person days per week for volunteers, we assume they are evenly distributed across center by operating status, such that 390,426 are associated with fully in-person centers, and 495,0975 are associated with centers in hybrid operating status. For purposes of this calculation, we assume that volunteers associated with in-person centers will volunteer in person an average of once per week, and that volunteers at centers in hybrid operating status will volunteer in person an average of once every other week. We expect that the 175,476 combined volunteers associated with closed or virtual/remote centers will not volunteer in-person. These assumptions and data indicate that Head Start volunteers will average 637,975 in-person days per week.

We assume that each staff, child, and volunteer will use one mask per day, and adopt an estimate of the cost per surgical mask of $0.14.[137] We anticipate that staff, children, and volunteers will combine for a total of 3,693,426 masks per week, with the total weekly cost of these masks of $517,080. We anticipate that a substantial portion of these individuals would wear masks when in-person at Head Start programs without this requirement, and adopt an estimate of 25% for the share of these costs that are attributable to the interim final rule. Finally, we calculate that the masking requirement will be effective for the entire time horizon of this analysis. Table 19 reports the costs of masking that are attributable to the interim final rule.

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[136] *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html*

[137] *https://www.regulations.gov/document/OSHA-2020-0004-1033,* Table VI.B.14.

Table 19. Costs of Masking Attributable to the Interim Final Rule

Cost Element	**Estimate**
In-Person Days per Week, Staff	820,769
In-Person Days per Week, Children	2,598,467
In Person Days per Week, Children (2+)	2,234,682
In Person Days per Week, Volunteers	637,975
Masks per Person per Day	1
Total Masks per Week	3,693,426
Cost per Mask	$0.14
Total Cost of Masks per Week	$517,080
Attributable Share	25%
Weekly Attributable Costs	$129,270
Weeks Effective	13
Total Masking Costs	$1,680,509

Cost of Testing

We also identified a cost of testing Head Start staff and volunteers that receive an exemption from the vaccine requirement. Across all scenarios, we anticipate that 5% of Head Start Staff will receive an exemption, so 13,650 staff will be unvaccinated under the interim final rule. We further assume that 5% of Head Start volunteers, or about 53,050, will also receive an exemption. We assume that only staff and volunteers associated with Head Start centers that are fully in-person or in hybrid status will be tested. We assume that Head Start staff and volunteers will be tested weekly, and that this requirement will be effective for about 4 weeks of the time horizon of the analysis, from January 31, to March 1, 2022. This effective period is shorter than for the masking provision, which is effective immediately. We calculate that about 230,627 tests will be performed, and adopt an estimate of $10 per test. Table 20 presents these estimates and the total cost estimate of about $2.3 million. For the purpose of this analysis, we assume that the costs of testing are borne by the Head Start centers.

Table 20. Cost of Testing Unvaccinated Staff

Cost Element	Estimate
Exempted Staff	13,650
Exempted Volunteers	53,050
Total Exemptions	66,700
Share of Exemptions at In-Person/Hybrid Centers	83%
Head Start Staff and Volunteers Requiring Testing	55,669
Tests Per Week	1
Weeks Effective	4
Total Tests	230,627
Cost Per Test	$10
Total Cost of Testing	$2,306,273

Recordkeeping Costs

We anticipate that the interim final rule will result in recordkeeping activities. The Paperwork Reduction Act analysis estimates the total burden of 6,670 hours. To monetize this impact, we apply an estimate of the hourly wage of Education and Childcare Administrators, Preschool and Daycare, for individuals working in the Child Day Care Services industry. According to the U.S. Bureau of Labor Statistics, the hourly mean wage for these individuals is $24.78 per hour.[138] We adjust this hourly rate to account for benefits and other indirect costs by multiplying by two, for a fully loaded hourly wage rate of $49.56. Multiplying the fully loaded wage rate by the number of hours results in a total cost of $330,565.20.

Total Costs

We identify several sources of costs that are attributable to the interim final rule. Table 21 reports the monetized costs related to staff vacancies, costs of vaccination, costs of masking, costs of testing, and costs of recordkeeping. These estimates cover the Head Start staff vaccination coverage scenarios, and do not differ by discount rate. All estimates cover the same time horizon and are reported in 2020 dollars.

[138] *https://www.bls.gov/oes/current/oes119031.htm*. Wage rage for job code 11–9031.

Table 21. Monetized Costs Attributable to the Interim Final Rule

Value of Impact	Low	Primary	High
Staff Vacancies	$44,961,638	$22,480,819	$0
Training	$26,462,078	$13,231,039	$0
Vaccination	$7,558,658	$9,426,831	$11,295,005
Masking	$1,680,509	$1,680,509	$1,680,509
Testing	$2,306,273	$2,306,273	$2,306,273
Recordkeeping	$330,565	$330,565	$330,565
Total Monetized Costs	$83,299,721	$49,456,037	$15,612,352

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We consider it probable that the substantial reduction in COVID–19 cases per day among Head Start staff will result in fewer center closures due to COVID–19. We do not estimate the reduction in closures anticipated due to the interim final rule; however, we presented a calculation of how we would value the benefit of reopening on a per-center basis. For comparison, we also estimate the additional cost of masking, and additional cost of testing exempted staff and volunteers for centers that reopen.

If 1% of total Head Start centers reopen as a result of the interim final rule, this would result in 207 centers reopening. For the purposes of this cost analysis, we calculate the number of masks required under for a center operating fully in-person. This would result in 2,730 staff, 8,643 children, 10,610 volunteers wearing masks at in-person Head Start settings. They would require 67,474 masks on a weekly basis, 16,869 of which we attribute to the interim final rule. The total cost of these additional masks would be $2,362 per week. For testing, the same number of centers reopening would result in 667 additional exempted staff and volunteers requiring testing every week, which corresponds to $6,670 in testing costs per week. These costs sum to $9,031 per week. To continue the comparison, if 1% of closed centers reopen, we would monetize the benefits in time saved for parents and caregivers at $5.3 million per week. This comparison only includes impacts we are able to monetize, and does not account for changes in COVID–19 risks associated with reopening. As discussed elsewhere, these risks will be reduced as a result of the vaccination and masking requirements.

G. Net Benefits

We have analyzed the major impacts of the interim final rule under several scenarios of incremental vaccine-uptake among Head Start staff that are unvaccinated in the baseline scenario of no new regulatory action. In previous sections, we have indicated that the benefits are higher and that the costs are lower under the high vaccine coverage scenario than the low vaccine coverage scenario. In this section, we demonstrate the magnitudes. Table 22 presents the total costs, benefits, and net benefits that are attributable to the interim final rule under a 3% discount rate. Table 23 presents these same estimates using a 7% discount rate. Both sets of estimates cover the same time horizon.

Table 22. Net Benefits, 3% Discount Rate, 2020 dollars

Total Impacts	Low	Primary	High
Benefits	$195,986,161	$242,185,591	$288,384,996
Costs	$83,299,721	$49,456,037	$15,612,352
Net Benefits	$112,686,440	$192,729,554	$272,772,644

Table 23. Net Benefits, 7% Discount Rate, 2020 dollars

Total Impacts	Low	Primary	High
Benefits	$200,294,622	$247,964,991	$295,635,335
Costs	$83,299,721	$49,456,037	$15,612,352
Net Benefits	$116,994,900	$198,508,954	$280,022,983

An analytic issue not addressed in the assessment underlying these results is the question of how to interpret individuals' hesitation or unwillingness, in the absence of regulation, to accept an intervention that achieves extensive health protection for themselves, with little or no out-of-pocket cost, and ever-lessening time or inconvenience cost; a simplistic revealed-preference monetization of the rule's effect would be that it yields minimal or negative benefits for such staff members, even the ones for whom it prevents or reduces severity of COVID–19 infection. Given the dynamic nature of the pandemic—including scientific innovations and other human responses—it may be that long-run equilibrium for COVID–19 vaccines has not been reached, in which case the above use of VSL-related estimates for staff-member risk valuation may be appropriate at this time. On the other hand, other valuation approaches may also be worth exploring.

Toward that end, we use Herzog and Schlottmann (1990) to estimate a cap on how much the benefits of an employment-based health or safety regulation could exceed its costs.[139] Under this model, benefits accrue partially to workers in the form of health and longevity improvements (net of lost wage premiums) and partially to employers in the form of wage reductions, and the sum of worker and employer portions equals the monetized value of health and longevity improvements. Herzog and Schlottmann find that the wage reduction portion of total benefits is somewhere between 42.9% (=$4.29/$10.01) and 74.3% (=$3.67/$4.94). Put another way, the total benefits of a rule should be no more than 1.3 (=$4.94/$3.67) to 2.3 (=$10.01/$4.29) times the regulatory costs incurred by employers; otherwise, the wage reductions experienced by those employers would make it profit-maximizing (or surplus-maximizing, for non-profit entities) for them to mandate vaccination or perform the other risk-abatement activities without a regulation forcing them to do so.

The first several rows of Table 24 show upper bounds on staff benefits estimated by applying the Herzog and Schlottmann ratios to the estimated costs of the IFR (assuming for simplicity, as elsewhere in this analysis, that employers incur the costs).[140] Unlike in Tables 22 and 23, and the analysis that feeds into them, the quantified staff benefits in Table 24 are not necessarily limited to individuals who are newly vaccinated. Another, even more fundamental difference, is that Table 24 demonstrates an approach in which low costs are correlated with low staff benefits and high costs with high staff benefits.

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[139] Herzog, Henry W. and Alan M. Schlottmann. ''*Valuing Risk in the Workplace: Market Price, Willingness to Pay, and the Optimal Provision of Safety,*'' *The Review of Economics and Statistics 72(3): August 1990, pp. 463–470.*

[140] *Herzog and Schlottmann use an old data set (1965–1970) and focus on work settings quite different from child care centers. We request comment on whether more recent or better-tailored inputs are available.*

Table 24. Net Benefits Upper Bounds, Alternative Approach, 2020 dollars

Total Impacts *	Low	Middle	High
Costs	$15,612,352	$49,456,037	$83,299,721
Upper Bound Staff Benefits, Using 1.3 Ratio	$21,014,991	$66,570,251	$112,125,510
Upper Bound Staff Benefits, Using 2.3 Ratio	$36,428,821	$115,397,419	$194,366,016
Upper Bound Total Benefits, Using 1.3 Ratio	$157,426,995	$200,820,072	$244,213,149
Upper Bound Total Benefits, Using 2.3 Ratio	$172,840,824	$249,647,240	$326,453,655
Upper Bound Net Benefits, Using 1.3 Ratio	$141,814,643	$151,364,036	$160,913,428
Upper Bound Net Benefits, Using 2.3 Ratio	$157,228,473	$200,191,203	$243,153,934

* Non-staff benefits per Table 15.

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H. Distributional Effects

Executive Order 13985 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* includes consideration of agency policies and actions that create or exacerbate barriers to full and equal participation by all eligible individuals. As noted previously, a large share of children served by Head Start programs are from culturally and linguistically diverse families. And the majority of Head Start children are also from families experiencing poverty. In FY 2019, OHS administrative data indicate that 37% of Head Start children were Hispanic or Latino and the remaining 63% were of non-Hispanic or Latino origin. Further, 44% were White, 30% were Black or African American, 10% were biracial or multi-racial, 4% were American Indian or Alaska Native, and 2% were Asian.[141] As is evident with these data, the indirect beneficiaries of this IFR—the children and families served by Head Start programs—are disproportionately from diverse racial and ethnic groups, as well as from low-income families, and they will benefit greatly from reduced exposure to COVID–19 from teachers who are newly vaccinated.

I. Uncertainty and Sensitivity Analysis

In the main analysis, we report the value of COVID–19 mortality risk reductions using the central HHS estimate of the VSL of $11.5 million, and value of morbidity risk reductions using estimates of the VSC that are derived from the central VSL. As a sensitivity analysis, we recalculate these benefits using the low and high estimates of the VSL, which range from $5.3 million to $17.5 million. Table 25 reports the value of these risk reductions using the full range of VSL estimates.

[141] Source: Head Start Program Information Report; the remaining 10% of children were reported as ''Other or Unspecified.''

Table 25. Value of COVID-19 Risk Reductions Using Range of VSL Estimates, 3% Discount Rate

Risk Reduction	VSL or VSC Estimate			Value of Risk Reduction ($ millions)		
	Low	Central	High	Low	Central	High
Mortality Reductions	$5,367,303	$11,501,365	$17,507,633	$99.6	$213.4	$324.9
Morbidity Reductions						
Mild Cases	$2,728	$5,846	$8,900	$3.2	$6.9	$10.5
Severe Cases	$6,115	$13,104	$19,947	$0.8	$1.6	$2.5
Critical Cases	$846,720	$1,814,400	$2,761,920	$6.9	$14.8	$22.6
Total Value of Risk Reductions				$110.5	$236.8	$360.5

In our main analysis, we assume that the vaccination, masking, and other requirements will be in effect for the entire time horizon of the analysis. We also considered a scenario that these requirements will end at an earlier point in time. Specifically, we evaluated a scenario that the requirements would be repealed through subsequent rulemaking or expire on January 16, 2022, which corresponds to the last day of the most recent renewal of the COVID–19 public health emergency.[142] For this scenario, we assume that Head Start staff are surprised on January 16, 2022 by the announcement, and that unvaccinated staff discontinue efforts to get fully vaccinated. This results in a lower vaccine coverage rate of between 84.9% and 91.5%, compared to a vaccine coverage rate of between 86.6% and 95.0% under the scenario of the requirement in effect through at least January 31, 2022. This would result in smaller reductions in mortality and morbidity risks, and smaller reductions in absenteeism. It would also eliminate the costs from staff vacancies and training attributable to the interim final rule, substantially reduce the costs of masking and testing; and reduce the total costs of vaccinations.

J. Analysis of Regulatory Alternatives to the Rule

We evaluated several regulatory alternatives to the interim final rule. First, we assessed the impact of not including volunteers in the scope of the vaccine requirement of the interim final rule. Under this regulatory alternative, the reductions in mortality and morbidity for volunteers induced to get fully vaccinated outlined in Tables 12 and 13 would not occur. We also anticipate a reduction in costs attributable to the rule related to the costs related to vaccination described in in Table 18. Table 26 reports the net benefits of this policy alternative, using a 3% discount rate. Compared to our analysis of the interim final rule, this option would result in lower net benefits under the vaccine coverage scenarios that we analyzed.

Table 26. Net Benefits of Policy Alternative, 3% Discount Rate, 2020 dollars

Total Impacts	Low	Primary	High
Benefits	$69,232,095	$115,431,524	$161,630,929
Costs	$78,731,453	$44,887,768	$11,044,084
Net Benefits	-$9,499,358	$70,543,756	$150,586,846

We also considered two alternatives to the masking requirement. One alternative includes eliminating the masking requirement entirely. This policy alternative would reduce the cost estimates of the interim final rule by $1.7 million in line with the calculations presented in Table 19. A second alternative would limit the masking requirement to unvaccinated individuals. Under this policy alternative, the weekly masks needed for Head Start staff and volunteers would be reduced significantly, in line with the vaccine coverage rates. When the vaccination requirement takes effect, only the 5% of Head Start staff and volunteers who receive an exemption would be expected to wear a mask. This reduces the weekly masks for Staff and volunteers

[142] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVDI-15Oct21.aspx.*

attributable to the rule by about 95%. This policy alternative would also result in small reduction in the number of masks needed for children. About 1% of Head Start children are age 5 years and older, and some of these children may get vaccinated in response to CDC's ''recommendation that children 5 to 11 years old be vaccinated against COVID–19 with the Pfizer-BioNTech pediatric vaccine.'' [143] We estimate that the cost of masking under this policy alternative would be about $1.0 million, which is about $0.6 million lower than the masking requirement under the interim final rule.

While we do not include a monetized benefit for the masking requirement, we anticipate that it will reduce transmission of SARS–COV–2 at in-person Head Start settings from individuals covered by the requirement. This impact includes a reduction in transmission from children to Head Start teachers, staff, and other children. The reductions in transmission attributable to the interim final rule will result in additional, unquantified reductions in mortality and morbidity risks to Head Start children and families, and to the general public. Compared to the analysis of the interim final rule, the two masking policy alternatives would result in fewer averted COVID–19 cases, hospitalizations, and deaths.

Finally, we considered a policy alternative of linking the vaccination, masking, and other requirements of the interim final rule to the COVID–19 public health emergency. Evaluating this policy alternative requires an additional assumption about the duration of the public health emergency. In the Uncertainty and Sensitivity Analysis, we explore a scenario in which the requirements would be repealed through subsequent rulemaking or expire on January 16, 2022, which corresponds to the last day of the most recent renewal of the COVID–19 public health emergency. That sensitivity analysis represents one possible outcome for this policy alternative. The main analysis, which assumes that the requirements will remain in effect through the time horizon of this analysis, represents another possible outcome for this policy alternative.

III. Final Small Entity Analysis

We have examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act. This analysis, as well as other sections in this Regulatory Impact Analysis, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

A. Description and Number of Affected Small Entities

The U.S. Small Business Administration (SBA) maintains a Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS).[144] We replicate the SBA's description of this table:

This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget, effective January 1, 2017. The latest NAICS codes are referred to as NAICS 2017.

The size standards are for the most part expressed in either millions of dollars (those preceded by ''$'') or number of employees (those without the ''$''). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm.

This interim final rule will impact small entities in NAICS category 624410, Child Day Care Services, which has a size standard of $8.0 million dollars. We assume that all 20,717 Head Start centers are below this threshold and are considered small entities.

B. Description of the Impacts of the Rule on Small Entities

We identify three categories of costs of the interim final rule that could impact small entities. Specifically, we expect that small entities will need to train Head Start staff to replace those who resign, and monetize these costs at about $13.2 million. For the purposes of this calculation, we assume that Head Start centers will purchase masks sufficient to cover every in-person staff, child, and volunteer, at a cost of about $1.7 million. We also assume that Head Start centers will incur the costs of testing for staff, at a cost of about $2.3 million. Finally, we attribute the costs of recordkeeping to small entities, at a cost of about $0.3 million. These combine for a total cost to small entities of $17.5 million. Dividing by the 20,717 Head Start centers, these costs are about $847 per small entity. As an alternative calculation, we estimate these costs are $864 per small entity, excluding closed Head Start centers.

Table 27. Costs Per Small Entity

Impact	Costs to Small Entities	Cost Per Small Entity
Training	$13,231,039	$638.66
Masking	$1,680,509	$81.12
Testing	$2,306,273	$111.32
Recordkeeping	$330,565	$15.96
Total	$17,548,386	$847.05

The Department considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3% impact on revenue on at least 5% of small entities. Therefore, we perform a threshold analysis to determine whether these costs are likely to result in a significant impact on a substantial number of small entities. For $847 to exceed the impact threshold, a small entity would need to have revenue below $28,235 over the time horizon of the analysis, or annual revenue of less than about $113,000.

The Administration for Children and Families awards about $10 billion in grants to Head Start programs, including Early Head

[143] *https://www.cdc.gov/media/releases/2021/s1102-PediatricCOVID-19Vaccine.html.*

[144] U.S. Small Business Administration (2019). ''Table of Size Standards.'' August 19, 2019. *https://www.sba.gov/document/support-table-size-standards.*

Start-Child Care Partnerships.[145] Across 20,717 centers, this averages to $466,192, which is well above the $113,000 threshold. Thus, we conclude that the interim final rule is not likely to result in a significant impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 1302

COVID–19, Education of disadvantaged, Grant programs—social programs, Head Start, Health care, Mask use, Monitoring, Safety, Vaccination.

JooYeun Chang,

Principal Deputy Assistant Secretary for Children and Families.

Approved:

Xavier Becerra,

Secretary.

For the reasons discussed in the preamble, we amend 45 CFR part 1302 as follows:

PART 1302—PROGRAM OPERATIONS

■ 1. The authority citation for part 1302 continues to read as:

Authority: 42 U.S.C. 9801 *et seq.*

■ 2. In § 1302.47, revise paragraphs (b)(5)(iv) and (v) and add paragraph (b)(5)(vi) to read as follows:

§ 1302.47 Safety practices.

* * * * *

(b) * * *

(5) * * *

(iv) Only releasing children to an authorized adult;

(v) All standards of conduct described in § 1302.90(c); and

(vi) Masking, using masks recommended by CDC, for all individuals 2 years of age or older when there are two or more individuals on a vehicle owned, leased, or arranged by the Head Start program; indoors in a setting when Head Start services are provided; and for those not fully vaccinated, outdoors in crowded settings or during activities that involve sustained close contact with other people, except:

(A) Children or adults when they are either eating or drinking;

(B) Children when they are napping;

(C) When a person cannot wear a mask, or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities Act; or

(D) When a child's health care provider advises an alternative face covering to accommodate the child's special health care needs.

* * * * *

■ 3. In § 1302.93, add paragraphs (a)(1) and (2) to read as follows:

Subpart I—Human Resources Management

§ 1302.93 Staff health and wellness.

(a) * * *

(1) All staff, and those contractors whose activities involve contact with or providing direct services to children and families, must be fully vaccinated for COVID–19, other than those employees:

(i) For whom a vaccine is medically contraindicated;

(ii) For whom medical necessity requires a delay in vaccination; or

(iii) Who are legally entitled to an accommodation with regard to the COVID–19 vaccination requirements based on an applicable Federal law.

(2) Those granted an accommodation outlined in paragraph (a)(1) of this section must undergo SARS–COV–2 testing for current infection at least weekly with those who have negative test results to remain in the classroom or working directly with children. Those with positive test results must be immediately excluded from the facility, so they are away from children and staff until they are determined to no longer be infectious.

* * * * *

■ 4. In § 1302.94, revise paragraph (a) to read as follows:

§ 1302.94 Volunteers.

(a) A program must ensure volunteers have been screened for appropriate communicable diseases in accordance with state, tribal or local laws. In the absence of state, tribal, or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings.

(1) All volunteers in classrooms or working directly with children other than their own must be fully vaccinated for COVID–19, other than those volunteers:

(i) For whom a vaccine is medically contraindicated;

(ii) For whom medical necessity requires a delay in vaccination; or

(iii) Who are legally entitled to an accommodation with regard to the COVID–19 vaccination requirements based on an applicable Federal law.

(2) Those granted an accommodation outlined in paragraph (a)(1) of this section must undergo SARS-CoV–2 testing for current infection at least weekly with those who have negative test results to remain in the classroom or work directly with children. Those with positive test results must be immediately excluded from the facility, so they are away from children and staff until they are determined to no longer be infectious.

* * * * *

[FR Doc. 2021–25869 Filed 11–29–21; 8:45 am]

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[145] *https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/no-search/hs-program-fact-sheet-2019.pdf.*

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